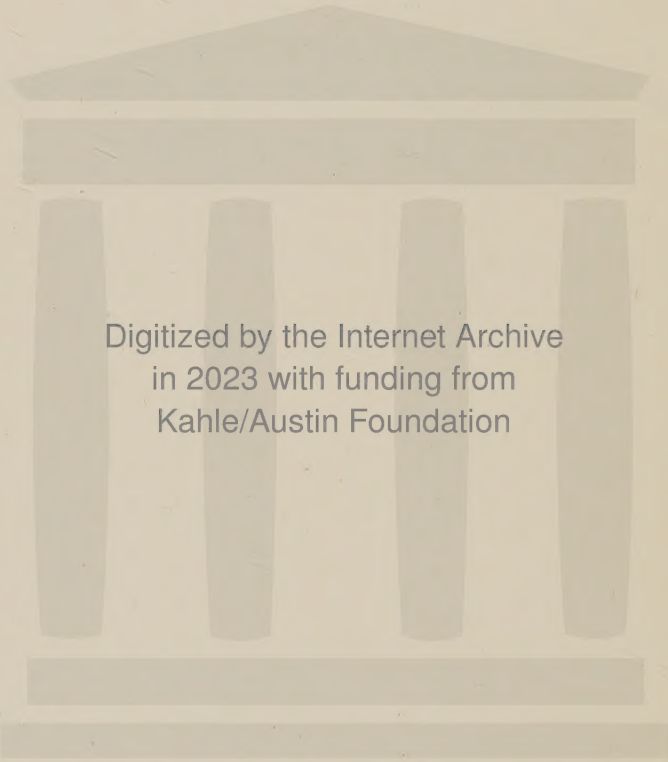


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THE GREENBACKS OR
THE MONEY THAT WON THE CIVIL WAR
AND THE WORLD WAR



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THE GREENBACKS

OR

THE MONEY THAT WON THE CIVIL WAR
AND THE WORLD WAR

By

OTTO GRESHAM

CHICAGO

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1927

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THE GREENBACKS OR THE MONEY THAT WON THE CIVIL WAR AND THE WORLD WAR

INTRODUCTION

IT is about finance that this book is primarily written. The medical and legal parts interwoven are mainly illustrative,—essential to understanding the subject. The World War demonstrated that the two prime requisites in waging war are money and blood.

As a means of making war it is realized that the blood of the race must be improved. But as to money, it is still the old cry, “debasing the coin of the realm” or inflation. Purify the money and you will end war. And it is the only way.

From January, 1867, until he went on the bench in October, 1869, my father was financial agent for the State of Indiana, which brought him in touch with every phase of the money question, especially that growing out of the financial legislation of the Civil War. Winslow, Lanier & Company, New York bankers, were the financial agents of the State as they had been when located at Madison, Indiana, during the Civil War. Night after night I heard the question discussed by lawyers, legislators, financiers, and judges, one of whom, Judge David Davis, sustained the debasing of the coin of the realm as a means of winning the war between the States.

Some critics of the Republican faith were of the opinion that Walter Q. Gresham's views were not entitled to consideration because he voted for Grover Cleveland in 1892. And Henry James in his life of Richard Olney maintains that because Walter Q. Gresham voted against Benjamin Harrison when he voted for Grover Cleveland, that Walter Q. Gresham should, as Secretary of State in Mr. Cleveland's Cabinet, have maintained the acts and principles of Messrs. Harrison and

Olney, principles that tended to imperialism and war with Great Britain.

A "sound money" man and opposed to the Sherman Act, which provided for the coinage of sixty cents' worth of silver as a dollar, Benjamin Harrison signed the bill as president and then refused to let bonds be issued,—bonds to buy gold to stay the panic that was on before he retired. It fell to the lot of Walter Q. Gresham to marshal the Cleveland forces, Republicans as well as Democrats, to repeal an act which President Harrison did not want passed. At first Grover Cleveland as president did not believe the trick could be turned, and so he hesitated to call a special session of Congress.

As a lawyer and advocate General Harrison was one of the best, but as a public man he was lacking in executive capacity;* he deferred to less talented but not more patriotic men than he was himself.

Finance comprehends more than money *per se*, which is only metallic coins and promises to pay printed on pieces of paper. It is credit, and the coins and paper are mere means of transferring that credit from one man to the other, or from one nation to the other.† "The credit of a bank (nation), as well as all other credit, depends on opinion." Primarily it is a question of morals. "Marse Henry"‡ used to so treat it. "Money and Morals" was the subject of his most popular lecture. There is good money and bad money, good blood and bad blood. Money is based on law and international relations or bookkeeping,§ and the question of blood is becoming and will become more and more a question of international relations.

To speak of my own profession, the law, Elihu Root says that, after one hundred and fifty years of the Republic, the judges and lawmakers have so jumbled up the law that he no longer knows what it is. So, at Mr. Root's instance, the

* Post, 236.

† James Wilson. In Opposition to the Repeal by Pennsylvania of the Charter of the Bank of North America.

‡ Colonel Henry Watterson.

§ Post, 142, 249.

American Bar Association has named a number of lawyers to rewrite the law for our judges and legislators, State and National. Nothing the "Reds" have ever said compares in severity to this criticism of Mr. Root's on the incapacity of our judicial and legislative officers. Of course Mr. Root did not mean it that way. And while I am not defending the men on our benches, nor in our legislative halls—for many of them are woefully lacking in capacity, and some in integrity, at least intellectual integrity,—I am urging here as I do in the courtroom that it is their duty to beat Mr. Root's committee to it, rewrite the law plain, and in the courtroom deliver the goods—"right and justice," "the end of government," as Alexander Hamilton said, or "Liberty" as Patrick Henry put it.

The ablest American jurist, James Wilson, one of the signers of the Declaration of Independence and member of the convention that drafted the Constitution of the United States, in urging the ratification of that document by the convention of Pennsylvania, advanced the new conception of government which is at the basis of the American system. "We have remarked that civil government is necessary to the protection of society; we now remark that civil liberty is necessary to the perfection of civil government."

There is a connection between all the learned professions, says the same great jurist we have quoted, especially between law, medicine,* and religion.

The lawyer with a single client or the representative of a single interest is always a dangerous man in a community. Such a lawyer does not agree with the jurist or the orator of the American Revolution. There are no natural inherent rights of man. A lawyer often goes "far afield," and so he cleans up; he proves as he goes, and so it is he "puts over" so much—and some that is not always for the public good. And while there is not much science in medicine, in the actual practice, there is enough to make it embarrassing for the lawyer and the churchman. I have kept up the connection, as

* Post, 274.

my text will show, which, as a lawyer, I early formed with the medical fraternity. My plan was to become one of them. And so it was I became the attorney of Dr. William T. Belfield's Society of Social Hygiene, in Chicago, the first of its kind, designed primarily to purify the blood of the race and inculcate "temperance." Behind him were two thousand doctors. They did their own financing. They really did not need a lawyer but, as the Irishman would say, no one can deny that I was on the inside.

Constitutionally, economically and anatomically sound, the Belfield propaganda went around the world. Good money is not essential to waging war, but good blood is. Bad money will answer for war but not bad blood.

As a war measure Woodrow Wilson went behind the Belfield propaganda. It supplemented, if it did not precede, his war money or inflation measures. It revealed that thirty per cent of all volunteer and drafted men were defective mentally, aside from physical disabilities.* General Bullard shows that many of the defectives got by the doctors.† Leonard Wood was said to be a better doctor than a general. Naturally, then, the Belfield propaganda was the main plank in the Wood platform when he became a candidate for president in time of peace, and of course he was for a League of Nations with reservations. Still the Belfield plan is a little strong for some of my profession, the pseudo unbalanced reformers, and "proletariat cult."

Purify the blood and the money, and we will surpass the wildest dreams of the dryest of the bone dry advocates, and the advocates of world peace. But it will be easier to purify the money of the world than the blood of the race. And this is why this book is concerned with money. Besides, there is so much of the dilettante in the press and the publishers that the people have not the knowledge that could enable them to meet this basic problem of the race.‡

* War Department Annual Reports, 1919, Vol. 1, Part III, p. 2970, etc.

† Post, 265.

‡ Post, 54.

A friend and client, Mr. F. G. Browne, who has supervised this work through the press, and to whom I am indebted beyond my ability to acknowledge, approves all but my allusions to the propaganda or theory of morality of my client, Dr. Belfield, one of the greatest surgeons and the soundest moralist of the age. Nothing short of a super-government under a League of Nations may be adequate to finally putting over the Belfield propaganda. Dr. John Dill Robertson, under oath in the Federal Court in Chicago, as a witness for the Government in a prosecution against the druggists for selling morphine to addicts, declared the trade could never be abolished or even restrained until the government could control the production in China. But the Belfield propagandists realized the limitations on the powers of the existing governments, certainly on the powers of the government of the United States, in creating a League of Nations. The Belfield plan works on the improvement of the individual man through the smallest government units.

William Jennings Bryan died of indigestion. He was always known to overeat. The saloon was all right for Mr. Bryan until it would not vote for his kind of dollars. We enlisted the churches in the clean-up,—sent the preachers down to the City Hall to get insulted. As men in my profession would say, one of them preached “a whale of an opening,” a sermon from the text, “Only a great sinner can become a great Christian.” “In order to rise higher than a bishop one must fall lower than the galley slave.”* But it is not so written in the Belfield propaganda. On the practical side of government, when it comes to securing reforms, it is proper enough to play upon the resentment of men, but in the actual administration of the law the passions and resentments of even the best of men should not be allowed to enter.

To meet the churchman's claim to infallibility, the lawyer invented the fiction of the divine right of kings. After it had

* Victor Hugo.

served its purpose, a few crowned heads had to be cut off to establish the real basis of all government, "the consent of the governed," which Wilson puts over against Blackstone and the clergy. But that thirst for power, one of the bases of the human heart, still remains and must be restrained.

The preachers mean all right but they don't know how, as one of my profession said who was a member of the old Calumet Club at Michigan Avenue and Twentieth Street, Chicago. George M. Pullman, Samuel W. Allerton and Philip D. Armour belonged to this club. Younger men not so prominent but all active in business, finance, and on the Board of Trade, mainly made up the membership. There were big games of cards, late hours and sometimes no nights. "Aleck," William A. Alexander, was the best poker player in Chicago. He could look into a professional's eyes and read his hand. Many a night or morning he went from the poker table to business. Never was he late.

Some of us thought that it might tend to promote the good of the race and broaden the understanding of the churchmen so one of our clerical friends was elected a member of the Calumet Club. But it would not do. The women of his congregation who liked to come to our soirées or musicals and enjoyed a glass of punch feared our austere friend might yield to the temptation of the table instead of grasping a great opportunity for service. Most gracious and considerate would have been his treatment even at the hands of "Aleck." I once heard P. D. Armour say to his minister, Dr. Frank Gunsaulus, also president of Armour Institute, which Mr. Armour was backing, "Gunsaulus, you are too high up in the air, and at that you are not over two feet above the ground." George M. Pullman, the creator of the Pullman Palace Car system, was a very able man. But as "P. D." would say, he was "too high up in the air." He would not see any of "the boys," let alone talk to them. On the personal side he was as severe as Volstead and no more successful.

Samuel W. Allerton, less known and remembered than Pullman and Armour, was illiterate but had more money and property than either and knew more about finance than all the college professors and bankers combined. He was a Director in the First National Bank when the Forgans, James B. and David R., came in with assets and emergency currency. "Sammy" did not take much to that kind of banking. He was opposed to the government printing the money. That simply made for inflation, he said. He was one of the best informed men I ever knew. He said bank notes supported by government bonds and gold and silver was a better currency.

Allerton said bankers were mere clerks who only could supply the medium of exchange. He had gold and silver mines and liked to descant to the boys about currency. "Old Hutch," C. B. Hutchinson, one of the boldest men who ever operated on the Board of Trade, made so much money that he was persuaded to organize a National Bank of his own. He started out as president, but when it appeared that he must sign every bank note that went into circulation, he said: "This is a clerk's job. I'll resign and appoint one of the boys president."

The first step by the lawyers was in that realm of political corruption that Macaulay predicted would be the downfall of the republic. Andrew J. Hershell drew the first bill for the organization of the Municipal Court of Chicago. Judge Hiram Gilbert's draft was finally accepted by the legislature. It was to be the poor man's court. It has proved to be the rich man's court. The rich want cheap justice as much as the poor. William Durran, a scientific Englishman, has discovered what we perceived, namely, that the English Bench and Bar are not delivering the goods. "Legalism" instead of Justice, at a high cost, is their output. The American lawyer doesn't want simplicity and cheapness in litigation so he is against the Municipal Court system of the City of Chicago. Judge Henry Olson, the first Chief Justice and the executive man of the

Municipal Court, proved from the jump-off that a good natural mechanic can run a machine he did not invent.

With a simplified procedure, classified business, and vast executive powers in the presiding judge, which puts the court beyond the control of the municipal "Boss," embracing a moral branch and commanding competent medical experts, the Municipal Court of the City of Chicago as a part of the movement is the best in the world. Chicago may be crude but she is virile.

Up to the time of the beginning of our movement, 1900, the Chief of Police in every large city and most of the small ones of these United States was named by the head of the Brewers' Trust. The Belfield plan aimed to break up the connection between the brewers, the police and the underworld. But the holier than thou and the society sisters were not forgotten. Speaking before the Chicago Bar Association, the medical man reached for the best, the smallest government unit and the individual man and woman. Temperance was his basis. It made for efficiency. It traveled far without any pains or penalties behind it. One of the redeeming traits of the race is that love of right and justice that is implanted in the human heart. Divested of his interest and prejudice, provided he has a sound understanding, the most infamous man would rather the right should prevail.

"Drinking whiskey is a 'sucker's' game," said "Mike" McDonald, the Chicago gambler, who died a millionaire. And the boys on the Board of Trade were persuaded it was not necessary to take a drink every time they made a trade. It was almost that bad at one time, even when the government put no restrictions on trading in futures or running corners.

Samuel W. Allerton went on the water wagon. "Old Hutch" did not think it necessary to go that far. Fanaticism is not sanity. None of our doctors condemn alcohol or whiskey as a medicine. Indeed, they say it is medicine and the best of them use it as such. Wayne B. Wheeler, the attorney for the

Anti-Saloon League, says the Eighteenth Amendment only condemns beverage drinking, consequently it did not confer on Congress the power to control the medicinal side. In short, the prohibition lawyer deceived his client, who wanted alcohol condemned also as a medicine.

Under the "general welfare clause," much may be done at which the average publicist, reformer, prude and "proletariat cult" would stall. It is the broadest grant ever made by a people to a government.*

Calhoun, the States Rights statesman, was the first to realize its existence and its grant to the government of the United States. And hence it was he who developed the proposition and insisted that the "slavocracy" should control through its offices the government under that grant. With that power within his reach, "Ben" Wade,† the man of force from the West, and one of the best of my profession in the Senate of the United States, advised Calhoun's successors that their only safety lay in getting out of the Union while the getting was good—that is, while they controlled the supreme power or the government of the United States. Under the aid of this power medical science has done so much to decrease mortality and thereby increase mental instability and criminalism, that Dr. Charles H. Mayo and the "Chicago Tribune" fear civilization will succumb.

Dr. Belfield supplies the solution. Sterilize the defectives. For a number of years the Government of the United States has been practicing obstetrics. Why not go a little further back? It might help some of our talented statesmen now wanting in that rarest of all endowments, a sound, discerning common sense.

Why should not the State breed men as well as animals? Because some, even many, are congenitally inebriates, neurasthenics and degenerates, is no reason to indict a whole nation.

* Post, 104.

† Post, 90.

And too much money, even of the best kind, is as bad for the body politic as too much blood is for the individual. High blood pressure is akin to high finance. Half the time,—saying nothing of international affairs,—ordinary business is drunk on a plethora of money.

The biggest coward on earth is the man who is afraid to lose. Woodrow Wilson was consistent and logical in rejecting all reservations and compromises. "Compromise," said Macaulay, "is the essence of statesmanship." Certainly it is that of the European system. In theory it is not the American but in practice it is. One of the troubles with the Eighteenth Amendment is that it is a compromise, and therefore unenforceable, as witness President Coolidge's order attempting to put State officers under the National enforcement offices.

A single super-government of the world regulating the act of every individual would be the ideal system, and we may in time come to it. And if so, I will not deny Mr. Wilson or Colonel House the credit of the vision. Meanwhile, aside from the constitutional limitations, improving the race and the small governmental agency will best attain the desired end. Senator Borah is bone dry and yet he is rightly, on constitutional grounds, opposed to a League of Nations or a World Court. But how is prohibition, if ever, to be brought about without a League of Nations, and without every governmental unit down to the lowest unit and every individual man supporting it?

James Otis gave up his client, lost other clients, returned his retainers, and resigned his position as King's Counsel, but he conceived and started the American Republic. Lyman Trumbull, as a United States Senator, gave up the presidency when he cast his vote against the impeachment of President Andrew Johnson, but as a lawyer Trumbull saved the American Republic.* For the system would have been wrecked had a few men in the Senate of the United States been able to remove a president because of a difference on constitutional questions

* Post, 176.

and because that president did not always act in the best of faith. So there are a few lawyers and doctors whose primary allegiance is to right and justice.

As Lamartine said of the French Revolution :

"This deadly struggle for the cause of human reason is a thousand times more glorious than the victory of the armies which succeeded to it. It acquired for the world inalienable truths, instead of acquiring for a nation the precarious increase of provinces. It enlarged the domain of the mind, instead of expending the limits of a people. Martyrdom is its glory; its ambition virtue."

The Frenchmen of the revolution were windjammers, or, as the historians say, orators, but they were all lacking in executive capacity, and hence at that time we had a plethora of blood. The best of historians and the greatest of political philosophers, Lamartine, was a failure as a dictator because he lacked executive capacity. Of the Girondists Danton said they could talk but could not act.

President Wilson and Colonel House illustrated the want of executive capacity in the average statesman. When it came to going down the line, as the saying is, or crowding the man in the White House, Colonel House says he was careful not to go so far as to offend the President. This, by way of illustration, is most illuminating.

Printing Federal Reserve notes was an easy way for Woodrow Wilson to bring the profiteers and organized labor to the support of the World War, but it was not executive capacity unless it be considered the acme of statesmanship to incorporate permanently into our system some of that corruption that Alexander Hamilton avowed we should copy from the Mother Country and which the present Secretary of the Treasury says is as innocent as contributing to a Sunday School fund. The war over, Mr. Wilson deflated, but the deflation has not been shared in by organized labor and the profiteers. Only farmers and certain of our so-called middle classes have been affected.

I hold no brief for the farmer, but his case illustrates that inflation is a means of transferring the property of one man to the other without consideration.

In our complex system of international relations the French veteran, indeed the French profiteer, may justly claim want of consideration against many of the obligations their government signed to the American government, before and after we went into the war and before our boys got to the front. We charged them too much. But every government on this and the other side was a party to the duress. This proves that all wars are waged on inflated or corrupt money.

As a further illustration of this error of compromise and want of executive capacity in government, I cite the acts of Abraham Lincoln against slavery on moral grounds, as his panegyrists put it, yet standing up before God Almighty and proclaiming to the world in his First Inaugural address that he was willing to make slavery express and irrevocable by the Thirteenth Amendment of the Constitution. His premise for this avowal, that the constitution at least implied that there could be property in man, was a proposition he denied and disproved, to the satisfaction of William Cullen Bryant, Horace Greeley, and all the editors, in his Cooper Union Speech of one year before, namely, February 27, 1860. The Thirteenth Amendment with slavery was to be the compromise that was to save the Union. In making this avowal I do not mean to detract one iota from the credit due Mr. Lincoln's morality. "He did not desire evil. . . . He hoped subsequently to redeem that which is never redeemed—present crime,—through the purity, the holiness of future institutions."* But I do claim and cite this offer of the martyred president as an example that emphasizes his lack of executive capacity,† as a result of which we had a war three years longer than it should have lasted, and the European monetary system—debasing the coin of the realm, or inflation,—that it was the

* Lamartine, Vol. 3, p. 356. Post, 166.

† Post, 105-9.

purpose and intention of the framers of the Constitution to get away from.* In order to understand inflation and how it came about, Mr. Lincoln's weakness on the executive side must be understood, and this makes it necessary to show that time after time he yielded to expediency instead of being guided by principle.

OTTO GRESHAM.

CHICAGO,
April, 1927.

* Post, 142, 183,

CHAPTER I

THE FINANCING OF WARS

WARTIME INFLATION, OR DEBASING THE COIN OF THE REALM—THE “GREENBACKS” OF THE CIVIL WAR COPIED AFTER THE “CONTINENTALS” OF THE REVOLUTION—THOMAS JEFFERSON’S OPPOSITION TO TAKING UP THE WAR DEBTS OF THE COLONIES—MANIPULATION OF THE ENGLISH WAR LOANS—REPUDIATION OF THE “CONTINENTALS”—“SOUND MONEY” MEN—FIRST RECOLLECTIONS OF MY FATHER, GENERAL GRESHAM—THE “SHINPLASTERS” OF THE CIVIL WAR—CAMPAIGNING WITH MY FATHER—TWO KENTUCKY LAWYERS, COLONEL BENJAMIN H. BRISTOW AND COLONEL JOHN W. HARLAN.

THE “Winning of the War” has, for all times, been the excuse of kings and statesmen for debasing the coin of the realm.* Deflation then was easy although drastic. After a war, the alloy is assayed out. In modern times it is fiatism or inflation. Thomas Jefferson said, during the War of 1812, “In the interval between war and war, all the outstanding paper should be called in, coin permitted to flow in again and hold the field of circulation, until another war should require the yielding place again to the *National Medium*.”

And yet a few men of experience in affairs of State have said that sticking to specie payments is an effectual† as well as a moral way of winning a war, and that there is not the neuritis and reaction “the morning after” that has followed every war ever waged. My father was such a man.‡

Long before my father had had me reading Webster’s argument in favor of the constitutionality of the Bank of the United States, in which Webster said that only gold and silver

* Post, 158, 204-208, 266-279.

† Post, 191. ‡ Post, 231.

coin was money,—a definition which will be specifically referred to hereinafter,—I understood my father's denial of the expediency and constitutionality of the "Greenbacks" or "legal tender" Treasury notes, "the money that won the Civil War." Copied after the "Continental" notes, they trebled the cost of the war, I heard my father say, many times over what it would have been had they stuck to Webster's definition of the money of the Constitution—gold and silver coin.

In making my protest, and my plea for moderation in debasing the coin of the realm, before drawing my final conclusions at the end of the last chapter of this book, I shall bring forward some facts which cannot be gainsaid but are largely suppressed by the publicists and the critics. These facts impeach the ability and efficiency of the kings, the statesmen, and the bankers.

Rated a "sound money" man by his followers, as well as a statesman by the historians, Thomas Jefferson was opposed to paying in full our Revolutionary War debt. The funding bill drafted by Hamilton and introduced into the first Congress on January 14, 1790, which took up only \$168,280,200 of the "Continental" currency at one cent on the dollar, was pending when Jefferson returned after two years in France and entered the cabinet as Secretary of State in March, 1790.*

Just how many Continental notes were issued there is now no means of ascertaining. Before the close of the Revolution they had ceased to circulate, although a prime factor in the contest for independence.† The present Federal Reserve Bank estimates the aggregate at \$242,100,176. Justice Field, in his dissenting opinion in the "Legal Tender Cases," put the amount at over \$300,000,000.

Jefferson was opposed to paying any interest whatever aside from taking up the war debt at its face. He wanted to pay the bare market value only of all State and Continental secur-

* Post, 28.

† Post, 197-211.

ities or obligations which had largely passed out of the hands of the original holders into the hands of speculators. These obligations, including the small amount of the "Continentials" at a cent on the dollar, and accrued interest of \$13,170,117, aggregated \$64,456,933, and this amount the Government, under the present Constitution, actually took up of the Revolutionary War debt. It did so by issuing stock, the last of which was not retired until 1836.

While the American Congress was issuing and repudiating the Continental dollar, the best of the English or British Statesmen were protesting in the British Parliament against further debasing the coin of the realm in order to carry on the American war.

Before Yorktown they showed,—in language compared to which Senator LaFollette's St. Paul denunciation of the World War was a Summer zephyr,—that if Lord North and George III were permitted to continue the war they would break the Empire without conquering the rebel Americans.

To be specific, on the 26th day of March, 1781, Sir George Savile introduced a motion to investigate Lord North's handling of the last loan, that of October, 1778. He had the support of Charles James Fox and the best lawyer then in England on the popular side, Sir Fletcher Norton. While they did not put it over, they marshalled 163 to 209 votes for it and later on, under a resolution from the Parliament, the King made peace,—and then was censured for the terms exacted. Unconditional independence should have been accorded the Americans, said Fox.

The popular, even the historical, impression is that the Revolutionary War ended with Yorktown. But it took the War of 1812 to bring actual independence, and good relations with the Mother country did not come until in the treaty of Washington she agreed to pay for the damage she had done to our shipping while we were printing the greenbacks at a

time she and her bankers would not loan us the coin to win the Civil War.

Cornwallis surrendered October 19, 1781. The Armistice did not come for almost two years. Meantime Washington was made furious by the execution of Captain Joseph Heddy, a Continental officer who had surrendered as a prisoner of war at Middletown, New Jersey. When General Carlton refused to give up the murderer, Captain Lippincott, although Carlton disavowed the act, Washington selected by lot one of the Yorktown prisoners, Captain Charles Asquill, a comely youth of almost royal blood, to be shot in place of the murderer. Only the intervention of the French King saved Asquill's life. The boy's mother,* although an English woman, had reached Louis XIII. No man was more zealous for the sovereignty and independence of the American people than George Washington. He resented as bitterly the assumptions of the representative of the Robespierre republic, Citizen Genet, as he did Louis' interference. Experience with both convinced him of the mistake of entangling alliances.

The record is that the night after Cornwallis surrendered, October 19, 1781, Washington wrote Congress for more troops. He wanted the French to attack Charleston while he besieged New York. He begged them not to make an ignoble peace. Samuel Adams the best Democrat of them all agreed with Washington.

As late as May 10, 1782, Washington wrote to Congress, "The British nation appears to me to be staggering and almost ready to sink beneath the accumulating weight of debt and misfortune. If we follow the blow with vigor and energy, I think the game is ours." But the Congress, of which Thomas Jefferson was a member and chairman of the Committee on Foreign Affairs, the state legislature, the college professors, and the business men, preferred to negotiate, to give up some of that independence and sovereignty Washington and his

* Post, 258, 281.

soldiers were winning for the American people, and for the support of which Thomas Jefferson and the Congress in the Declaration of Independence had "mutally pledged to each other our lives, our fortunes and our sacred honor."

November 30, 1782, a preliminary treaty of peace was signed at Paris, and then not until September 3, 1783, was the definite treaty signed. January 4, 1784, it was ratified by the Continental Congress. It was not to Washington's liking but having been made he said it must be enforced. It almost prevented the ratification of the Constitution of the United States, which was primarily drafted to secure its enforcement. Only seven out of the thirteen states had voted in the Congress to ratify while the Articles of Confederation require the assent of nine states. The words, "All treaties made . . . and which shall be made . . . shall be the supreme law of the land, and the judges in any state shall be bound thereby, anything in the constitution of laws of any state to the contrary notwithstanding," were inserted in the second section of Article VI of the Constitution of the United States because even Jefferson could not secure Virginia's assent to the ratification of this most extraordinary treaty. That is, the Virginia legislature then in the hollow of Patrick Henry's hand declared June 22, 1784, she would not repeal her confiscation laws under which the debts to British subjects and American Tories had been seized and paid for in the depreciated and repudiated Continentals. Under international law confiscation of the debts of an enemy was a legitimate act of war, and as a matter of fact when Virginia revolted she became as sovereign as the British King.

The IV Article of the treaty provided there should be no lawful impediment to the recovery of the full value in sterling money of all bona fide British debts. The V Article provided that Congress should earnestly recommend to the states the repeal of all laws under and by which the debts owing to the British subjects by American citizens had been confiscated; and

the VI, that there would be no further confiscation but a firm and lasting peace between the two nations. The consideration on the King's side was the first section in which the King acknowledged the independence of the thirteen Colonies, the VIII, in which he guaranteed the free navigation of the Mississippi from the source to the mouth, and the VII, in which he agreed to give up the forts and cities like New York, Charleston, Oswego, Niagara, Buffalo and Detroit and not carry away with his army any runaway or stolen negroes.

The words in Article VI which we have quoted would, as the Supreme Court held in the first litigation before it, nullify all state confiscation laws. This is why Patrick Henry opposed the ratification of the Constitution of the United States. He assailed Edmond Randolph, who was to be and became Washington's first Attorney General, James Monroe and James Madison, delegates to the Philadelphia convention and the man he rated the soundest of all on the practical side as well as the British King for exacting of us a treaty which his parliament would not have approved had it given up the dearest sovereign rights of the British people. Finally he threatened the business interests of Philadelphia, New York and Boston to take Virginia and join the Confederacy that was to arise beyond the Alleghenies. Commercialism, Henry showed in the Congress of 1786, had proposed to give up the free navigation of the Mississippi to poor old Spain. Never did Washington display greater wisdom. On the administrative side he could not have peace until the treaty was enforced. He had been proclaimed president in advance. He turned down lawyers like Randolph, Hamilton and James Wilson of Pennsylvania who were for unconditional ratification of the treaty or the Constitution and said to Henry, if you will ratify the treaty or the Constitution as it stands with Section II, of Article VI intact, we will amend the Constitution so the like can never happen again. Henry took his word, Virginia ratified and New York followed. In his first inaugural address Washington avowed the agree-

ment. His political and personal relations with Henry were always intimate. He wanted Henry to become Secretary of State when Randolph resigned.

When the British sailed from New York November 25, 1782, they took with them 5,000 stolen and runaway negroes and then left word they would never give up Oswego, Buffalo, Niagara and Detroit until their debts were paid again in coin.

It is not in the histories but it is in the records that Washington and his Attorney-General, Edmond Randolph, brought the first suit that was brought in the Supreme Court of the United States. It was the case of *Vanstophorst vs. Maryland* (2 Dallas 401), to the August Term of 1791. Vanstophorst, Washington Irving shows, was a banker at Amsterdam and an agent of Washington. The Supreme Court had been organized February 1st, 1790. No appeal or writ of error had yet reached it when the Vanstophorst case was filed. Under the Judiciary Act the Supreme Court was organized before the federal, circuit or district courts. Washington is the real father of our judicial system. He had remarked that its absence was the chief defect in the government under the Articles of Confederation. It was expressly designed to be a part of the machinery, as is manifest from the constitutional provision, previously quoted, for enforcing the treaty, and the Vanstophorst suit was brought by way of anticipation to show the States that they were amenable to the federal law and treaties. Randolph's legal ability is attested by the smoothness with which the machine worked.

Georgia not only refused to repeal her confiscation laws but broadened them. At the August Term of 1792 she brought the next suit that was brought in the Supreme Court, Georgia against Brailsford (2 Dallas 403). It was to enjoin the British creditors from prosecuting suits against her citizens under the Treaty because she claimed the British King had broken the Treaty, in that he had not given up Oswego, Buffalo and

Detroit, returned the runaway negroes and was inciting the Indians to make war on us. •

Washington countered with the next suit by his Attorney-General, Randolph, who appeared for the British creditors in *Georgia vs. Brailsford* by the case *Chisholm vs. Georgia* (2 Dallas, 432). Chisholm was a good loyal citizen of South Carolina, suing on behalf of a British subject. Washington figured that a loyal American citizen would secure a hearing before the judges he himself had selected with reference to the enforcement of this most obnoxious treaty that would not be accorded to a despised British or Tory creditor.

The Supreme Court in every case upheld the Treaty, and held that only Washington or the Executive Department of the Government could declare the Treaty invalid because the British King was not obeying it. At any rate, as long as Washington stood by the Treaty, the court would do so, and that it was a valid exercise of the supreme power of the government of the United States in the absence of a Bill of Rights or Amendments to require the American debtors to pay a second time in sterling, that is, in coin, their debts, to secure the recognition by the British King of American independence and get the British out of Oswego, Buffalo and Detroit. (*Ware vs. Hilton*, 3 Dallas 199.)

Before Georgia raised the standard of revolt by threatening to resist, by force of arms, the enforcement of the Chisholm judgment (and she was appeased by the Eleventh Amendment prohibiting a suit by a citizen against a state) and the Jay Treaty, the Virginia debtors had resorted to all the expedients, honest and dishonest, known to the law, to beat the British and Tory creditors. John Marshall was one of their lawyers. So successful were the debtors, although the courts of Virginia both state and national were clogged with this litigation, that not a dollar was collected. The legislatures helped with stay or exemption laws. The British government was obdurate to Washington's representations that he had done all that the

Treaty required by organizing the federal court and turning the British claims into judgments.

The British held on to Oswego, Buffalo, Detroit and Mackinac. To add to Washington's troubles, the new French Republic February 8, 1793, declared war against England and she went to seizing our foodstuff in our vessels going to France and to impressing our seamen.

Sick in mind and body, rather than go to war, which the majority of French and American people preferred, Washington resorted to another treaty. He sent Chief Justice Jay to England to secure by negotiation what he and the commercial men said the United States was not strong enough to secure by force of arms without the most grievous sacrifices. Jay brought back, on March 9, 1795, his treaty which provided that the British would get out of the forts by June 1st, 1796, in consideration of the treaty's failure to make any protest against the impressment of our seamen and acknowledge the supremacy of the British King, and our debasement, for His Majesty would not recognize the right reserved in our Constitution in Article 1, Section 8, as will be hereinafter explained,* to debase the coin of the realm, inflate or make paper money a legal tender in payment of debts—only Kings could do that—in that the treaty agreed in its second section that the Government of the United States should pay en masse in coin to the British creditors at a time when Jefferson was objecting to Hamilton paying only one cent on the dollar to the American creditors who had been paid in continentals.

The time will come when we will be strong enough to fight, was Washington's final reason for approving the Jay Treaty.

It was a man from the Mississippi Valley, Henry Clay, who introduced the resolution and crowded New England commercialism most reluctantly into the war of 1812. His judgment was vindicated by the squirrel hunters from Kentucky and the Northwest at New Orleans. They shot through the

* Post, 152.

head so many of Wellington's veteran infantry who ~~had~~ annihilated the Imperial guard at Waterloo that many more lay down until the balance sought safety in retreat. A real squirrel hunter never mutilates the body he shoots through the head. After the battle so many rose up that in consternation one of the Tennesseans exclaimed, "My God, boys, the day of resurrection has come." To the commercialism which had opposed the prosecution of the war, assented to the indefiniteness of the Ghent treaty, and asked, "What have we gained by the war?" Clay answered, "Respectability and character abroad, security and confidence at home."

The immorality of the Jay Treaty and the want of sense of Washington's cabinet, excepting Secretary of State Randolph, namely, Secretary of the Treasury Wolcott, Attorney-General Bradford, and Secretary of War Pickering, is conclusively demonstrated by the fact that the gentlemen named claimed Randolph was corrupt and a traitor to his country because he had suggested to the French Minister Fouchet that it would relieve the pressure and perhaps avoid war with England if the French would furnish the money to enable four very powerful Americans to settle with four powerful British subjects who were crowding their King to the limit.

Randolph's retirement was an event that the British Prime Minister had long been conspiring to bring about. A British cruiser had captured the French corvette which carried Fouchet's despatch to the directory in which Fouchet claimed Randolph and the Americans were corrupt because of Randolph's suggestion about raising the money with which to get rid of a few remorseless British creditors. Randolph never admitted the conversation with Fouchet. But the representative of all that is corrupt in commercialized government, Lord Granville, the British Prime Minister, sent the French despatch to the British Minister, Lord Hamilton, at Washington to be put in Secretary of the Treasury Hamilton's hands. Here is the proof of a bad man who should be removed from office.

Hamilton had been succeeded in the Treasury by one of the clerks, Oliver Wolcott, a Hamilton factotum. Although a Federalist, Hamilton had always opposed Randolph in the cabinet. Randolph did not accept the British system as our model.

Washington's horror of the atrocities of the Revolutionary tribunal of Danton and Robespierre made him an easy mark, surrounded by little men as he then was, for the wily English Premier.

Randolph saw a better day for France, for both Danton and Robespierre had died by the guillotine and the revolutionary tribunal they had created had been abolished. Randolph was for standing by the treaty of alliance with France and for making a treaty of offence with Denmark and Sweden whose merchant ships England was seizing contrary to all international usages.

What was wrong about Randolph suggesting buying a little immunity when Washington's personal representative to the Court of St. James, the Chief Justice of the United States, was buying it en masse? The French needed the foodstuff as their crops had failed, and that is why England made the seizure, although food was not then contraband of war, neither was it in 1914 to 1919. The absence of logic and sound sense in English international law is demonstrated by their claim that in 1914-19 it was right to put ammunition on passenger ships. As a condition of paying the English a second time, Randolph was insisting that the King should "lay off" of our merchant ships and impressing our seamen; in short, Randolph was against the Jay Treaty.

The quarrel with Randolph embittered both his and Washington's later years.

In his prime, possessing the physical vigor of the night he crossed the Delaware, Washington would not have sacrificed his right-hand man in putting the Republic on its feet any more than he would have approved the Jay Treaty. Assuming

Washington was right in both instances, on the theory that the safety of the State is the supreme law, Patrick Henry would not become Randolph's successor.

Not the orator that Patrick Henry was, Edmond Randolph was Henry's superior as a lawyer and that of all others of that time on the practical side. He had refused to sign the Constitution as it was drafted at Philadelphia because of that indefiniteness as to the powers of the State and National Governments that was removed by the Fourteenth Amendment. His vision was the best. Replying to Henry's argument that under the Constitution as it came from Philadelphia, slavery might be abolished by the war-power, Randolph said:

"I hope there is none here who, considering the subject in the calm light of philosophy, will advance an objection dishonorable to Virginia—that at the moment they are securing the rights of their citizens, there is a spark of hope that those unfortunate men now held in bondage may, by the operation of the general government, be made free."

Of all men, Washington's experience qualified him to appreciate the danger of this country to entangling alliances, so on the 19th day of September, 1796, he notified his countrymen he would not accept a third term, and gave us the best American state paper that was ever written, that is, against entangling alliances, in his farewell address.

Viscount Gray, in his "Memoirs" says that President Wilson stated at the peace conference at Paris, after the war, that for many months before the United States entered the war he, Wilson, was not sure that the drastic application of the British blockade would not so shape public opinion in America as to avoid an open rupture with the Allies and with Great Britain in particular.

December 15, 1861, "The Chicago Tribune" printed an editorial from "The London Times" of November 28, 1861, on the Mason and Slidell affair:

"It requires a strong effort of self-restraint to discuss with coolness the intelligence we print today. An English mail steamer, sailing under the British flag, and carrying letters and passengers from a Spanish port to England, has been stopped on the high seas and overhauled. Four of the passengers have been taken out and carried off as prisoners, claiming, and vainly claiming, as they were forced away, the protection of the flag of Great Britain. These are naked facts. We put out of sight the accident that the four gentlemen thus kidnapped were accredited with a diplomatic mission from the confederate states of America to the courts of Europe and also the peremptory manner in which the federal frigate acted in making her seizure. The intention of the federal government evidently was to act upon their strict right, and to do so in as little ceremonious a manner as might be. If they are justified by their rights as belligerents in what they have done their manner of doing it is a mere question of good or bad taste. If a rude fellow claims his rights coarsely, we must yet give him his rights; and if we would not find ourselves in the wrong, we must not quarrel with him on account of his ill manners."

Farther on "The Times" says:

"Unwelcome as the truth may be, it is nevertheless the truth that we have ourselves established a system of international law which now tells against us. In a high handed and almost despotic manner we have in former days claimed privileges over neutrals which have at different times banded all the maritime powers of the world against us."

The next day the French sided with the English and Mr. Lincoln gave up Mason and Slidell. So there is neither sense nor logic in English International law.

The strong language then used is a justification for my plain language hereinafter. Fox was for unconditional recognition of American independence because it was in the interest of the human race, not simply the English race. A good understanding between the American and British Governments, said this Englishman, would make for the good of the race. And that

is the doctrine I was raised on. During the debate on Savile's resolution, Joseph Dunning showed, in answering Lord North's defense, that his Lordship had corrupted the Attorney and Solicitor Generals and Members of Parliament in according them as well as his favorite bankers and brokers discounts that were not offered to the general public. Without the corruption practiced, even with the King behind him, Fox declared that Lord North could not uphold his power and influence—that is, hold a majority in Parliament. It was shown how this last loan was injuring the former loans of 1777-8. The "interests" were "tipped off" to sell the new bonds down to 55 for 3 per cents and 68 for 4 per cents. Aside from the manipulation as the new bonds went down because of their large volume, the depreciation was manifested in the former bonds which had been favorites of investors. And herein is conclusive evidence that inflation hurts the little fellow. Out of a loan of nineteen millions sterling they showed that the treasury only realized twelve millions. Since then Great Britain has never been on a specie basis, although that fiction has been maintained. From this precedent come our "Greenbacks" and Federal Reserve notes.

Hard, indeed, was it for Hamilton to induce Jefferson to advise his friends in Congress to vote for the Funding Bill. And when the funding shares went to par, as they did sooner even than Hamilton expected, Jefferson was furious, declaring he had been deceived.* His statement was wholly unwarranted, unless he be credited with the desire that prevailed at the time and entered into the adoption of the Constitution, namely, purposely to get out from under the debt that won our independence. There is no doubt that Hamilton said that it was necessary that a little of that British corruption was essential to the proper working of our government. But it is as dishonest for a government to pay, as it is for it to buy, the business interests. And in time the government at the top as well as big business will become honest.

* Ante, 16-17.

The repudiation* of the Continentals was in the face of the resolution of the Congress of January 11, 1776, that any person refusing such currency, or obstructing or discouraging its circulation, should be treated as an enemy of his country, and also in the face of the address of the Continental Congress of September 1, 1779, signed by John Jay, afterwards the first Chief Justice of the Supreme Court of the United States, "that the United States would be able to redeem the bills, and repelled with indignation the suggestion that there could be any violation of the public faith."

When it comes to "walking up to the captain's office" and paying one's debts, others than statesmen often show that smallness manifested by uttering unkind as well as untrue statements about their creditors. Europe is now indulging in this detestable practice.

The Supreme Court of Pennsylvania put it this way: The Continental money was issued by and expired with the Revolutionary Government, for the plan for a confederacy, reported to Congress in July, 1776, was not finally adopted by that body for recommendation to the States until November 1, 1777, and was not finally ratified by all the States until March 1, 1781. The Legal Tender laws were passed by the States in regard to the Continental paper at the request of Congress and were repealed by them upon its recommendation.

But the repeal of these laws did not lessen the moral obligation to repay the loans. Later we will show that the right to repudiate, to debase the coin of the realm or inflate, was an attribute of sovereignty that was taken from the States by Section 10 of Article 1 of the Constitution of the United States,—“No State shall make anything but gold and silver coin a tender in payment of debts, or pass any law impairing the obligation of contracts,” and vested in the Congress of the United States by Section 9† of the aforesaid article. In the interval between the Declaration of Independence and the rati-

* Ante, 16-17.

† Post, 148-152, 210.

fication of the Constitution of the United States, the States or Colonies were as sovereign as the British King.

John C. Calhoun, "the Great Nullifier," was a "sound money" man,* and said the inflation of the War of 1812 convinced him that sticking to specie payments was a better way than inflation to win a war. I mention Calhoun as a sound money man because it proves that the men of the South, with the possible exception of Jefferson, were sound money men down to the reaction that followed the demonetization of silver, the Crime of '73,† when they changed sides, and in '96‡ when they then went behind Bryan and fiatism or inflation.

My earliest recollection of my father is in connection with our Civil War for the preservation of the Government under the Constitution.

In July, 1864, General Gresham came out of the war with a shattered lower left leg that kept him in bed fifteen months and then on crutches for five years. The main artery in the lower part of his leg had been cut and the shin bone five inches below the knee shattered for over two inches by a one-ounce bullet. The artery could not be united. The ends were simply tied and consequently there never was perfect circulation in the lower limb and foot. Increased heart action was required to drive the blood through the small arteries. Thus, "anastomosing," as the doctors called the circulation through the small arteries, early impinged on my youthful memory.

To get the blood back from his leg and foot my father would elevate the foot. Often as we drove he would put his left foot on the dash of the buggy. After the bone filled in and united, which process took fifteen months, the pulse was never under ninety-six. The leg was not shortened, only a little bowed from walking on it too soon. And his was the only instance, so far as the records of both the Northern and Southern armies go, where both life and limb were saved in the case of a similar wound.

* Post, 250.

† Post, 213-14.

‡ Post, 247.

Before my father was off his crutches, he opened a law office, in November, 1865, in New Albany, Indiana. It was over Stoy's Hardware Store on Main Street between State and Pearl. It looked south over the original Scribner residence, the first frame house built in the town, now the home of the Daughters of the American Revolution. We could see the Ohio River from the windows, and when the river was high the steamboats and even the wharfboat, which in those days was a great institution in all river towns. The schoolhouse was less than three blocks away and I spent many of my late afternoon hours in that law office.

One afternoon, as one of the Louisville, Evansville and Henderson mailboats laid alongside the wharfboat,—the river at the time was very high,—I saw my father borrow \$1,500 in cash from one of his old soldier clients, put it in the safe, and hustle the client off to the boat. After the man was gone I asked my father why he did that. He answered, "Jim is drinking and would lose that money to the gamblers on the boat tonight. He will be back here in a few days and I'll give him his money."

As a practicing lawyer my father visited almost a dozen southern Indiana counties. I sometimes was taken along. The trials were all to the jury, and thus I got the impression, which has never been entirely effaced, that the jury is "the whole thing." My father, *par excellence*, was a jury or trial lawyer. On crutches he could get a verdict from Democrats or members of the Knights of the Golden Circle or Rebel sympathizers against the best Democratic lawyer at the bar. Men would put their business or their lawsuits in his hands who would not vote for him as a candidate for Congress.

I sat on the judge's bench, played with the court bailiff, who was usually an old soldier, although the judge might be a Democrat, and met the ex-soldiers by the score—many who had served in my father's commands, the 38th, 53rd and 23rd Indiana Volunteers. Some of these men I had met before and

they were liberal in staking me with "the money that won the Civil War."

My first recollection of "money" is of the green five-cent, ten-cent and fifteen-cent fractional paper currency, "shin-plasters," given to me by the soldiers at Vicksburg and Camp Hebron, Mississippi, and on the steamboats, which I found were good for candy at the sutler's store. At one time there was \$24,000,000 of this fractional paper currency outstanding, and in all, including the larger denominations, \$450,000,000 was printed in 1862 and '63 and delivered to the soldiers, and in this way went into circulation under the Constitution.

In 1866 my father was the "Union candidate," and in 1868 he was the Republican candidate, for Congress in the New Albany district against Michael C. Kerr, the sitting member, an able man, afterwards Speaker of the House. The district was normally heavily Democratic, the Democratic majority being increased by ex-Confederates from south of the Ohio River coming over to Indiana to vote against the Yankee soldier on crutches. In Southern Indiana there had been a treasonable wartime organization called the "Knights of the Golden Circle," which included in its membership every Democrat who was not in the Union army. Some of the Democrats who had been in the army would not vote the Republican ticket and hence it was that in 1866 there was started the Union ticket. That year my father was almost elected. In 1868, when it was a straight party contest,—with negro suffrage in the background, which my father declared against,—the Democratic soldier voted his party ticket. Horace Heffern of Salem, Washington County, Indiana, was one of the originators of the "Knights." He held a commission as Major-General in the armies of the Confederate States of America, from the hand of Jefferson Davis. Before the "Knights" were ready to take the field and release the Confederate prisoners, detectives exposed their purposes. But freedom of speech was then as free in Southern Indiana as in the British Parliament in 1781.*

* Ante, 7-8.

My father and Mr. Kerr held joint debates all over the district, and as Mr. Kerr also lived in New Albany, I was sometimes the bearer of a note to him from my father making an appointment for a joint meeting.

When it came to a fight the ex-Rebs usually had to yield, although, counting the ex-Knights of the Golden Circle, they were in a large majority.

Mr. Kerr had been a "Knight" in good standing. Sometimes my father would begin a speech, "I served in one army, Mr. Kerr in another." But one thing the Union soldiers had to do, which they often threatened they would not do, and that was, give Mr. Kerr a respectful hearing. This my father always insisted on.

Every Democratic and ex-Confederate lawyer in Louisville stumped the district against him, and especially he was opposed by the Louisville "Courier Journal" edited by "Marse Henry" Watterson, who was a devoted friend of Mr. Kerr and afterwards the leader in making him Speaker of the House.

My father was aided in his campaign by two Kentucky lawyers, Colonel Benjamin H. Bristow and Colonel John M. Harlan, both ex-Union soldiers, and both afterwards famous in the counsels of the nation,—Bristow, as Secretary of the Treasury in General Grant's second administration and the candidate of the reformers in 1876 for president, and Harlan, as a member of the Supreme Court of the United States. Both these men later greatly aided me as a young lawyer, Bristow, as head of a big law firm in New York, and Harlan from the Supreme Bench on my first appearance in that supposed-to-be august body, but in reality, democratic tribunal.

Harlan was Bristow's manager at the Cincinnati convention, but he soon went in with the practical statesmen, like Senator Zachariah Chandler, and voted for the nomination of Governor Rutherford B. Hayes of Ohio. All the power of General Grant's administration was exerted against Bristow because the latter had traced the "Whiskey Ring" frauds up

to General Grant's private secretary. My father was a supporter of Bristow. Afterwards General Grant admitted he had been misled.

Early in 1864, Colonel Harlan refused promotion and quit the army, and, with the Kentucky Court of Appeals, took the lead in opposing Mr. Lincoln's policy of reconstruction and the further prosecution of the war. He declared the soldiers' money unconstitutional, but in 1866 he relented and took the stump with my father, and in 1884, as a member of the Supreme Court of the United States, as we will hereinafter show,* held, with seven other members of the Court, in the face of Associate Justice Field's dissent, that only gold and silver was "money"—that even in time of peace irredeemable paper money is constitutional.

John M. Harlan had a big, resonant, musical Southern voice that carried far, and he was one of the best stump orators I ever listened to. The last time I heard him was just before he went on the Supreme Court bench, when I was seventeen. He had one trick I have never seen any other political speaker practice. He would shed real tears, especially when telling of the unkind treatment General Grant received in the early stages of the war. Because General Grant "drank too much whiskey," Harlan said, was no reason why Grant should be reprovved every time he won a victory.

While he afterwards regretted and took back many of the strictures he had uttered on Mr. Lincoln, both in public as well as in private, he never suffered any remorse because of anything he said of those who had opposed or failed to support General Grant. I have seen the color come to his face more than once when it seemed even to me, who could not say a word, that his contemporaries were a trifle malicious in alluding to the past. Twitted for being a "quitter," he said that the dilly-dallying of the administration in supporting Grant in the field was one of the reasons which had moved him to urge the ending of the war in 1863-4.

* Post, 231.

Harlan's opposition to Lincoln's reconstruction policy was based in part on the position, in the United States Senate, of Benjamin F. Wade of Ohio and of Zachariah Chandler of Michigan, which will be specifically set forth hereinafter.* Opposed to emancipation in 1863-4, Harlan afterwards became the proponent in the United States Supreme Court of Wade's and Chandler's plan for suffrage and civil rights for the negroes.

Benjamin H. Bristow came of an old aristocratic slave-holding family. He was born and reared at Hopkinsville, down near the Tennessee line. A wound took him out of the army. As a member of the Kentucky Senate from the Hopkinsville district, in February, 1865, he was one of the few members of the Kentucky Senate to vote for the ratification of the Thirteenth Amendment. He supported all the war measures of the Government at a time when Kentuckians like John M. Harlan, almost without a dollar, as the saying is, turned against the Government. This will illustrate what I shall later show, that the slaveholder was not *per se* a secessionist.†

Bristow's style of oratory was more on the argumentative, but, whether on the stump or in the courtroom, where I afterwards heard him many times, or in his office in social conversation, his voice had a charm and his statements were made with a lucidity that I shall never forget.

After my father became United States District Judge, I often drove with him in our one-horse buggy, pulled by the old gray mare, from New Albany to Bristow and Harlan's law office in Louisville. "Gus" Wilson, afterwards Governor of Kentucky, was one of their cub law students. We crossed on the New Albany and Portland Ferry,—it was before the Kentucky and Indiana bridge, now part of the Dixie Highway,—and drove up Portland Avenue to the office, which was in a small two-story building facing north on the south side of Jefferson Street opposite the Jefferson County Court House.

* Post, 187.

† Post, 102.

There I would wait sometimes for hours, not saying a word, listening to the war talk, legal talk and political talk, without understanding very much of it all, although some of it stuck and came back to me as I learned more of affairs. It was here that I first heard of Zachariah Chandler and Benjamin F. Wade, and of how, with oaths and revolvers, they had backed down the "chivalry" of the South in the Senate at Washington. At one time there was talk of Bristow resorting to the "code" to settle a difference with one of the distinguished sons of Kentucky. For the "chivalry of the South," my father always avowed his contempt, as well as for the assumed "virtue" of the New England man.

CHAPTER II

SOME PERSONAL CHRONICLES

GENERAL GRESHAM APPOINTED UNITED STATES DISTRICT JUDGE—
FRIENDSHIP WITH JUDGE DAVID DAVIS—DAVIS' RELATIONS
WITH LINCOLN—JUDGE GRESHAM'S PROFICIENCY IN PATENT
LAW—HIS COURT CROWDED WITH PATENT LITIGATION—
PHYSICAL BREAKDOWN.

SEPTEMBER 1, 1869, President Grant appointed my father Judge of the United States District Court for the District of Indiana. The appointment was made without my father's knowledge. He hesitated a long time about accepting, but he was out of sympathy with the plans of the Republican leaders to enfranchise *en masse* the ex-slaves, and this operated to make him consider favorably, for the position would take him out of active politics; and besides, his friends urged on him that, weakened by his war wound, he might break down as a practicing lawyer. So he accepted.

David Davis was then a member of the Supreme Court of the United States and assigned as the Circuit Justice to the Seventh Circuit of which Indiana was a part. He had been Mr. Lincoln's friend as a Circuit State Judge when Lincoln was a practicing lawyer. He was a very rich man and had paid the hotel bills at Chicago during the convention of 1860 when Lincoln was nominated for President.

David Davis was eminently practical and believed in exercising the authority of "the man on the ground." In his relations with Lincoln, he felt that he was the lawyer in court, who, by

virtue of his position, is clothed with certain authority, even to the extent of disregarding his principal's or his client's instructions. Hence he had no hesitancy in turning down "Old Abe's" instructions to make no deals or promises, and he and Joseph Medill secured Lincoln's nomination by promising Simon Cameron a place in the cabinet. And Judge Davis made President Lincoln come through and redeem this pledge, even in the face of overwhelming evidence that Mr. Cameron was not a fit man for any cabinet.*

In listening to Judge Davis I got the impression that Lincoln, although the greatest of rhetoricians, possessed of the loftiest and finest patriotism and tenderness of heart, did not possess that executive capacity† that made him the leader that most of the biographers and historians claim for him. Paradoxical as it may seem, this indecision of character the biographers and historians claim is what won the war. Instead, it gave us the greenbacks, and the war would certainly have been lost to the North if President Lincoln had not abdicated as Commander-in-Chief to General U. S. Grant.‡

All through Lincoln's official life there is overwhelming evidence of doubt on his part as to the correctness of his conclusions. This is certainly true when it came to his affairs of the heart. There is no doubt in any of Judge Davis' official acts, even in his opinions reversing some of the acts of the executive who appointed him.§ Unsurpassed by any judge who ever sat on the bench, in writing short luminous opinions, as my father put it, Judge Davis could go to the bottom of a question better than any man he ever knew. Having reached his conclusion, it was action.** Most men can talk, but few can act.

After I was practising at the bar and engaged in important litigation with old lawyers who were steering me, but in doubt as to just what to do, I had a chance to confer with Judge

* Post, 132-150.

† Post, 183.

‡ Post, 172.

§ Ante, 37.

** Post, 169.

Davis. He was then off the bench and at my father's house. In fifteen minutes he told me exactly what to do, and for a very short time everybody marveled at the precociousness of the youth.

Judge Thomas Drummond—a contemporary of Lincoln and Douglas as a member of the legislature from Jo Daviess County, and, as he says, one of the "Galena Gang" in the early days of their legislative career,—the Circuit Judge who performed the functions of the present United States Circuit Court of Appeals, one of the ablest and most accomplished judges who ever sat on the bench, was inclined to swing the pendulum to the extreme of the Federal power, especially in railroad receiverships. As the "Czar of the Seventh Circuit" he built bridges and miles of new track, and borrowed money to pay the bills, and then made the railroad boards of directors repay the borrowed money.

Judge Davis was for getting the rebellious States back into their old relations as soon as possible, while my father was fond of saying, "With me, the war ended at Appomattox, and I will swap a good Confederate soldier for a carpetbagger any day." Consequently there were cases that are not in the books that held that the war suffrage amendments to the Constitution of the United States did not make for social equality. Judge Davis brought this, as the view of his brethren on the Supreme Court of the United States, to his brethren on the Circuit.

Much of the time in the Federal Court they did not have a jury. It was different from the State Courts. But when it came to handling a jury from the bench, instructing them, making the last speech, as a disgruntled lawyer would sometimes complain, my father proved as facile as when he stood before them as "twelve men good and true." I often sat for hours in my father's courtroom, listening to the lawyers, without comprehending very exactly what the issue was.

Sometimes John M. Harlan would come over to my father's court in New Albany and then go to our home to a midday

dinner. This was while Mr. Bristow was solicitor-general and was in General Grant's Cabinet. He usually came in a one-seated open buggy drawn by one horse, and he almost filled the seat.

One entire afternoon, with my father and Judge Davis on the bench, only a few men in the courtroom, I listened, open-mouthed, to Senator-to-be Joseph V. McDonald. He pounded on the table and read from law books, but I could not get heads or tails of what it was all about. As we went back to the hotel,—I had come up from New Albany that morning for a Saturday visit to my father,—I told him I did not think much of his court or of Mr. McDonald's speech, for I did not see any jury. This was the first time I had ever seen a court in operation without a jury. His answer I will never forget. "That was a very fine argument of Mr. McDonald. He was talking about that fifty-cent piece of paper you have in your pocket. Some day you will understand that a piece of paper is not money."

Justice David Davis was one of the five Supreme Court judges who later upheld the constitutionality of the "Greenback," as will be shown later on.

Then there was the panic of 1873—hard times, we were told,—and I was soon to get more light.

My father's work on the Bench was harder than it ever had been at the Bar. Instead of the work being light, it was heavy, especially on the mechanical side, in which the educated man, or the professional man, even if he be a soldier, was and is usually deficient. The patent branch of the law is a matter of technicalities and machinery. Few of the judges of the Supreme Court of the United States were at that time, at least, efficient in this branch of the law. The District and Circuit judges, all past middle age before appointed, could not or would not master it. Justice Davis was unique in that he avowed his ignorance. A man who reaches middle age is loathe to learn a new profession. Put on the Federal Bench at 37, with five

years' absence from the technicalities of his profession, my father turned to his mechanics and so far mastered that branch of the profession that until the time he left the Federal Bench his court was crowded with patent litigation. He was different from the old army officer, for even in Grover Cleveland's second administration, as Secretary of State, he had seen the possibilities of the aeroplane as an engine of war, although at that time the Wrights had not even raised themselves ten feet from the ground.

Over-work and close application brought on dyspepsia, and the impaired circulation from the old wound convinced my father that there was trouble in his lungs. But the doctors were sure the lungs were sound.

I was with him when he went to see Dr. David W. Yandell in June, 1874, in Louisville and the doctor practically ordered him out of his office. My father was insisting something was wrong with his lungs. He had been there before. The doctor peremptorily said that the lungs were sound. Before we reached our home in New Albany that afternoon, my father was bleeding from the lungs. My consternation, which lasted for days, when my father's death seemed imminent, gave way later to the conviction that doctors cannot always "call the turn," that is, make a correct diagnosis.

Dr. Yandell was an ex-Confederate and eminent in his profession. He had been the chief medical officer of General Albert Sidney Johnston at Shiloh. As they passed over the field, at Johnston's request the doctor dismounted to minister to the wounds of a Yankee soldier. Johnston rode on, received the shot that severed an artery in his right leg, and bled to death before his surgeon overtook him. Had Dr. Yandell continued with his general the artery would have been tied and Johnston's life saved, and, of course, the battle won,—at least, so say the Southern historians. But the circumstances under which General Johnston was shot—trying to rally a broken Confederate brigade—General Grant says indicate that the re-

sult would have been the same had General Johnston not been shot down.

My father had for months consulted all the doctors on the north side of the river, including Dr. Sloan, who had watched him for fifteen months while he was recovering from his war wound, and they were all of Dr. Yandell's opinion, that the lungs were sound. The hemorrhage made all the doctors quickly change their opinions.

While there had been no organic trouble in his lungs before my father went on the bench, tuberculosis may have developed, but as will be shortly shown, in three months he recovered and lived thirty-one years longer, to die of pneumonia while Secretary of State of the United States,—still something was radically wrong with him that afternoon in Dr. Yandell's office.

Without the faith of the Christian, and certainly not in fear of the Lord, for I have not suffered much from remorse, I came to the conclusion as I later rode along with my father through the mountains of California and saw strength come back to him, both mental and physical, that there is something in life aside from the mere physical organism. This something my best medical men tell me is apart from their "medicines" that apparently work the cure. This, they say, is why one man dies and another recovers, under the same treatment.

My father was farther from the surgeons when he was wounded than was General Albert Sidney Johnston when he was shot at Shiloh. In addition to a severed artery from which Johnston bled to death, the main bone of my father's left leg was shattered for over two inches. But he was leading the leading division of a victorious army. After all the advantage of a surprise at five o'clock in the morning, General Johnston, at two o'clock in the afternoon, was trying to rally a beaten army. The mental depression must have been great. The favorite of his government, he knew, if he was the military genius he is credited with being, that that government would never take the place of the one he was seeking to destroy.

On the other hand General U. S. Grant, a fatalist as some say, distrusted by his government, disobeying its orders, sure of his end, was mowing down the chivalry of the South like leaves before the Autumn wind. Johnston's heart was out of him before he was shot.

Over and over I had heard my father say that there was no shock or reaction following his wound, no faintness, only increased heart action. To his immediate superior, General Frank Blair, the corps commander, he was able to detail, after being wounded, the general situation and tell him to "bore in," that victory was theirs. Out on the skirmish line were Sherman's generals, and there is where McPherson, the army commander, was killed the next morning. In the World War, the generals, it is said, were never in exposed positions nor in physical danger.

I did not get it out of any book, but as a fifteen-year-old boy, without quite realizing its effect, I worked to encourage my father to take a bright view and to forget his bodily condition. "Certainly the doctors don't know what is the matter with you. The blood has stopped coming and it may never start again." Some things that I did, as will presently appear, were more potent in taking his mind off his ills than the things I designed to have that effect.

Afterwards I ate many good dinners at Dr. Yandell's hospitable board and heard him discuss my father's case and that of one of my legal preceptors, Thomas A. Hendricks, who died as Vice President of the United States. To Mr. Hendricks Dr. Yandell expressed the opinion, in June, 1884, that he had less than two years to live. A gangrenous infection had manifested itself in his right foot. Mr. Hendricks died in December, 1885, and to my own knowledge, died deprecating Dr. Yandell's diagnosis.*

"It was his pure blood," Dr. Yandell said, as did the doctor who urged him to hold on to his limb and not have it ampu-

* Post, 216.

tated, "that healed whatever was the trouble in the lungs, whether tubercular or otherwise." But Dr. Yandell's final opinion was, that the long, continuous, and close application to work and study, dieting or starving, had so impaired his strength that some of the tissue in the lung cells gave way; the break might have come in some other part of the body, but quickly healed with rest, open air, and plenty of nourishment supplemented with a fair amount of stimulant in the shape of good whiskey. Manifestly the blood had to be pure to carry to and deposit the right amount of calcus or bony tissue to fill in the two inches of bone that had been shot away.

"Blue blood" is different from pure blood. In the conventional way the blue ranks higher. But so much of the blue blood of Europe has been impaired by disease that the scientific man and the world are coming to see the importance of purifying the blood as well as the money of Europe. The World War cannot all be laid to the congenital withered arm of the otherwise talented Emperor of Germany. Some of that lack of mental balance which the Kaiser has revealed has manifested itself in the acts of too many of the statesmen on this as well as the other side of the Atlantic.

My father was prouder of his pure blood than the Kentuckian of his chivalry. As a mere physical organism he rated himself away above the "Blue Bloods." This gave him a mental force that made him strong on the administrative side,—strength of character enough to break publicly with his party and vote for Grover Cleveland in 1892. "If it is necessary to secure Grover Cleveland's election," he said to me as we walked along the streets of Chicago, and I am sure he never said it to anyone else, "I will resign and take the stump for Cleveland." Back or through the little conventionalities that control our free press he would go to the pure blood of the common people.

Long before completing my sixteenth year, or then and there, as we lawyers say, but not in the conventional book way, I learned much before I ever thought of becoming a student of

the blood and its circulation, of what is erroneously termed the science of medicine, as well as of law and especially of finance. The truth is, there is not much science to any of the three but a lot of the alloy. As to finance, this will be manifest before we get through.

In 1874 Dr. Yandell and the doctors on the Ohio side of the river advised a trip to California and to stay until the lungs healed.

CHAPTER III

BOYHOOD EXPERIENCES AND POLITICAL ECONOMY

TRIP TO CALIFORNIA WITH MY FATHER—THROUGH THE MINING CAMPS—THE FARO BANKS—FARO CHIPS ONLY REPRESENTATIVE OF MONEY, "PROMISES TO PAY"—SAN JOSE AND EXPERIENCES AS A STUDENT AT SANTA CLARA COLLEGE—LEARNS FROM NEVADA BOYS OF THE INCREASING OUTPUT OF SILVER—THE DEMONETIZATION OF SILVER, OR THE CRIME OF '73—SILVER AND GOLD THE YARDSTICKS OF MONEY—BACK TO THE EAST AND THE "GREENBACK"—MY FATHER EXPLAINS THE INFLATION BILL—TOO MUCH OF ANY KIND OF MONEY IS AN EVIL—MY EARLY FIRST-HAND OBSERVATIONS INVALUABLE IN LATER UNDERSTANDING FINANCIAL QUESTIONS—THE MAKING OF WAR IS ESSENTIALLY A BANKING PROPOSITION—PRESIDENT LINCOLN AND SECRETARY CHASE LACKING IN FINANCIAL EXPERIENCE—EFFORTS TO DESTROY OUR CREDIT AT BEGINNING OF THE CIVIL WAR.

BEFORE we started on our California journey, Secretary of the Treasury Bristow made a trip to New Albany to see my father, as did also Justice David Davis. The afternoon that Mr. Kerr, my father's old Congressional opponent, called, Judge Davis and Mr. Bristow were still with us. Mr. Kerr was then a candidate for renomination in the old district on a "sound money" platform, the payment of the obligations of the government in coin (there was then no difference between gold and silver), that is, in opposition to the "greenbacks." They all went at it on the "money question." Judge Davis was

rallied for being a "Greenbacker," under which name there was then a numerous political party. One statement of Mr. Bristow's I remember as well as if it were yesterday,—“Morton, with the Inflation Bill, has made Indiana a Democratic State.”*

My mother and my sister went with us. As the Central Pacific train climbed the mountains,—there was then but one transcontinental line and no competition, and the schedule was only fifteen miles an hour,—we speculated as to whether the high altitude would make my father's hemorrhage return. Happily it did not.

A new kind of money soon began to appear, gold "eagles" and other gold and silver coins. My father was soon engrossed and talked "money" with the men on the train. Captain John Lee Davis of the navy, an Indiana man by birth, then on his way to a station in the Orient, was one of the passengers. At Cheyenne two big Californians who had been Forty-niners got on the train with their gold eagles and California gold bank notes, and until we reached San Francisco Bay there was nothing talked but money and finance. An active participant in the discussions was an Englishman on his way to Australia.

California was then on a specie basis with gold and silver coin the only circulating medium. This had been the case ever since the discovery of gold.

We went first to San José because General Giles A. Smith, who had succeeded my father in command of a division in Sherman's army after my father received his wound, was living seven miles east of San José, in the mountains near where the Lick Observatory now is. General Smith was dying of tuberculosis, the result of exposure and uninterrupted duty night as well as day. There was never any let-up when they "went in," unless they were killed or badly wounded.

Five hundred miles through the center of California my father and I drove in a spring wagon. I hunted along the way. We started at San José without a map or compass, and drove

* Ante, 31.

north to the Mission of San José at the foot of San Francisco Bay, through Larimore Pass into San Joaquin Valley, crossing the river of that name on a small ferry hung on a cable, then on through Modesto and Oakdale to Coulterville, where we stopped to have a break in the wagon repaired. Our horses were small mustangs who would travel all day without water but would not hold back a pound when it came to going down hill or mountain.

We drove into Yosemite Valley by the Merced Route. There were no toll roads, but there were toll bridges. Several were on the Merced River, and one in the valley at the foot of the mountains. A dollar in coin was the toll per person. There was then one small "hotel" or shack in the valley and only two camping parties. We camped on the bank of the Merced River for a week. Its water was clear and cold, and full of trout. My father did what was rare for a white man to do, he caught some of the mountain trout. The Digger Indians could catch them by the hundred, but few white men could. In addition to taking care of the horses and killing the game, I did the cooking over a campfire.

My father supplemented my cooking with three stiff drams of whiskey per day. He rapidly grew stronger. We slept on the ground without a tent. At the end of six weeks his weight went from one hundred and forty-five to one hundred and sixty-seven pounds. And with his return of health and strength I realized the power and force he exerted in affairs. Before the six weeks was up he cut out the whiskey. To a miner who was badly off from the effects of too much whiskey, my father said, "If my boy cannot control his own appetite, taking the pledge will not save him." The old miner had urged that I ought to be saved from his fate.

We came out by the Yosemite on the Mariposa Route. At Big Oak Flat, the first stage station out of the Yosemite, ten thousand feet above sea level, we camped for another week. There were grizzlies all around us, but they were harmless

as long as we only watched them. I wanted to try a shot at one with my small rifle from horseback and then run for it, but I took an old hunter's advice not to do so. My ambition was to be a good wing shot. I never shot at a deer or antelope from a stand, and I was not skillful enough to hit one on the run from the back of a horse on the run, although I often tried it. But I believed that at rest I could put a bullet from my small rifle between any animal's eyes.

My father did not fire a shot on the trip. At times, in practicing wing shooting, I aggravated him and the mustangs beyond measure as we were driving quietly along, by banging away without warning at a hare on the run or bird on the wing. The mustangs would break into a dead run, but by the time my father had them under control, and had got over his indignation at me, he would forget he was a sick man.

Through the mining camps we went and saw the gold come out of the ground. We saw the miners "pan" the gold in the small streams and watched the immense placers washing away the hillsides. Both the faro banks and the bars were wide open.

I observed that the armed men in these places were very "courteous" in their intercourse with each other.

I also observed that the dealers of the faro banks used round ivory disks of different colors instead of the gold coins, nuggets or dust, the actual capital of the bank, which was kept in the till and in the safe. The player bought these chips from the dealer in exchange for his gold coin and nuggets. The idea that the faro chips were only representative of money and had no inherent or intrinsic value of themselves was easily understood, even by a boy, when I saw the dealer buy back with gold a sufficient number of the chips to keep the game going, from a miner who had made a long, almost uninterrupted series of winnings, but had not gone so far as to "break the bank." According to the modern method of banking, the faro banker would have issued more chips,—and that would have been "emergency currency."*

* Post, 254.

It can readily be understood that in the mining camps it was easy for my father to make me comprehend the words that a school teacher the winter before had made me memorize out of the Constitution of the United States,—“shall have power to coin money and regulate the value thereof, and of foreign coins, and fix the standard of weights and measures.” These words meant gold and silver molded into coins, and that a “promise to pay” was not money even if printed on green paper.

The faro banks, in the mining centers at least, had more actual capital and were in a better position to stand a “run” than many private and National Banks, organized, through connivance with official authority, without the cash in the till that the National Banking Act required, with which I have since been familiar.

We were back in San José by the middle of August. “Santa Clara College,” at Santa Clara, three miles away, was a college largely in name only, really a preparatory school, conducted by the Jesuits. It had been started as an Indian school as an adjunct to the Mission of Santa Clara back in Coronado’s time. I had read all of Prescott’s works, and only recently his “Conquest of Mexico and Peru.” The school was situated in the center of the town of Santa Clara, and was surrounded by a fence ten feet high. It appealed to my youthful imagination, and I pictured it a field as interesting as the grizzlies and the faro banks in the mountains. I expressed a wish to my father to put in the seven months he was to remain in California, at this school, and he readily consented.

The president of the school, Father Varsi, an Italian, as were most of the priests, was typical of his order. But I soon found there were not enough Jesuits on the Pacific Coast, although a cordon of them was maintained just inside that ten-foot fence, to prevent night excursions into town from the school for tobacco and whiskey, and to mail letters and get letters. I never was very strong for either tobacco or whiskey, but I liked a “look-in” from the practical side. There was no objec-

tion to Father Varsi reading the letters, indeed some of them, rating him as the meanest old cuss that ever lived, were expressly designed for his eye and were mailed inside. And then he would be furious.

The majority of the nearly two hundred students were of Spanish and Indian extraction, from Southern California and Mexico, and many were from down the coast as far as Patagonia.

Surely "the worst of all governments, that which is most fatal to religion, is government by priests." Or, as William Durnan, an English scientific man in criticising my profession put it, "Like clericalism, legalism grants indulgence."

In theory the confessional is not a bad institution. The individual, if he can become contrite enough to confess his shortcomings and ask forgiveness, even of a titular god, has worked a transformation in himself, even if for only a short time before he enters the sacred precincts of the confessional. The very fact that the confession must be made at stated intervals, if one would live within the church in good faith, is a powerful deterrent. Confessing to an atrocious crime that was never committed was a popular youthful prank practised at Santa Clara while I was there.

At Sunday evening vespers, Father Mamulito, a little man of Spanish origin, was one of the best preachers I ever listened to. Not a word of dogma, fanaticism or affairs of State, but simply the purest and straightest morality.

At Santa Clara College I learned from the boys from Nevada—and especially from one from Virginia City, one of the eldest, a youth of twenty and the best jumper in the school, who had worked in the mines and belonged to the Miners' Union—of the extraordinary amount of silver the Consolidated mines had been pouring out. Another boy was from Pioche, in southeastern Nevada, a big silver producing section. His father owned a silver mine.

As a consequence of the increased production, the price of

silver had fallen, and hence the "Crime of '73," or the demonetization of silver.* The "silver boys" at Santa Clara understood this, and I began more clearly to comprehend, as I had in the faro banks in the mining camps, that there was no inherent money value in gold and silver, but that, aside from being the circulating medium, money was simply a yardstick; and I saw that if gold should continue to be produced in the way that the Nevada boys at Santa Clara College predicted might be the case, the use of gold as a yardstick might be impaired.† On the other hand, should the production of gold stop there would be a check on the expansion of business. But by this, the inference must not be drawn that I was ever a greenbacker or inflationist.

As we came back from California, in April, 1875, and crossed the Continental Divide in the Green River Country, we again encountered the greenbacks. At Kansas City, where we stopped to visit some Civil War comrades of my father, there was nothing but greenback money; gold and silver had entirely disappeared.

On January 14, 1875, Congress had provided for the retirement of the greenbacks, to take place January 1, 1879. In order to bring this about, the Secretary of the Treasury was authorized to issue, that is, print and sell, bonds with which to get gold to redeem and retire the paper currency.

I heard my father explain all this to his soldier comrades, who were claiming that if the greenbacks were good enough money for war they were good enough money for peace. I also heard my father explain the Inflation Bill, which General Grant had vetoed April 22, 1874.‡ And I remember my father made this statement to an ex-soldier, an educated man, who had been an army surgeon: "The time will come when you will see that the Inflation Bill is wrong."§

But as will be hereinafter shown in detail, on the 31st day

* Post, 213.

† Post, 214.

‡ Ante, 51.

§ Post, 214.

of May, 1878, after it appeared conclusive that the resumption acts would be a success, Congress provided that, co-incident with the retirement of the greenbacks, \$348,000,000 of them should be issued and re-issued and never retired,*—and hence it is that we have this currency today as a part of our Federal Reserve System, all the financiers, statesmen and college professors to the contrary, notwithstanding.

In listening to my father's explanation, at Kansas City, of Grant's veto of the Inflation Bill, I got the idea, which has never been effaced from my mind, that one of the evils of any kind of money is too much of it. This will be hereinafter demonstrated by the facts. Too much currency causes speculation, and over-speculation causes panics. Gambling on the stock exchange in one respect is akin to playing the faro bank. Neither adds a dollar to the National wealth. Then when the speculator is asked to pay up, he says, and his banker approves, "Put the printing presses to work, that is, give us emergency currency."

When specie payments were resumed in 1879, I was a student at Wabash College and twenty years of age. At this same time provision was made for the repeal of the Bankrupt Act of 1869, one of the incidents of the high financing and speculation of the post Civil War. I heard much at the fire-side about the administration of this law of 1869, from my father, as a U. S. District Judge. He hated the law. It encouraged perjury on the part of debtor and creditor. It seemed to me that my observation of the workings of the mines and of the faro banks in California, and my father's dissertations on the greenbacks and the workings of the bankrupt law, had given me a better understanding of the operations and the explanation of John Sherman, one of the ablest of financiers, then Secretary of the Treasury, than the college seniors, like Albert B. Anderson, were getting out of their books on political economy. These and all the Civil War

* Post, 214, 230.

questions were debated every Friday night, sometimes to a late hour, in the two literary societies to which practically all the students belonged. One of Anderson's classmates, "Old Doc" George Vinnedge, said he was taking a course in political economy in the newspapers and that he was getting more out of it than from the text books. He quoted Justice Bradley of the Supreme Court,* as we shall hereafter, to the effect that the political economists and professors did not know much about finance anyhow. He had been in trade and commerce before coming to college. And all during his college course he helped the newspapers out by contributions.

Old Doctor Tuttle, the President of the College, always loyal to the Union—he had urged the boys to enlist in '61 and had supported the greenbacks as a war measure,—was for resumption and "the money of the Constitution and his Saviour." There was no discrimination then against silver. But we haven't even yet got back to the "sound money" of the constitution. Instead we will show in a subsequent chapter (XIX) that the Supreme Court held the act of May 31, 1878, valid, that is, that even in time of peace it is one of the sovereign powers of our government, as it is of all governments, to make irredeemable paper money a legal tender in payment of debts, or to "debase the coin of the realm." The greenbacks are now part of our Federal Reserve money.

Again we must quote John C. Calhoun, "The making of war is largely a banking proposition." This will be demonstrated when we come to the greenback legislation and decisions and the working of the Federal Reserve system. But there can be no such thing as winning a war if the winner comes out a bankrupt. Debasing the coin of the realm or its modern substitute, inflation, is the greatest cause of individual as well as of National bankruptcy. According to the present Bankrupt Act—that of 1898, and it ought to be repealed, it was not passed as a supplement to war legislation—the definition of a bankrupt, aside from failing to "pay as you go," is

* Post, 210-212.

a man who admits in writing that he can't pay his debts. A proposition of composition with his creditors is further evidence thereof.

So we say that every European nation engaged in the World War is now a bankrupt. This is not an argument against war, but a suggestion of the incompetency of the governments and the bankers who urged the World War. The rake-off would be big for the bankers as it has been in every war, by debasing the coin of the realm, or inflation, and the resultant transferring of property without consideration from the small property holder to the big man or the banker. "Sure we will win," said the international banker. "We have Russia on the German flank. We have staked her, shove them in." But Russia was a shell. The bankers' excuse that they did not know it, is conclusive of their incapacity. They ought to have known. The failure of the allied governments to learn the conditions that speedily led to the collapse of Russia is no excuse for the banking interests that were loaning money to the Russian government not knowing that Russia was in no condition whatever to fight Germany.

On taking the oath of office, March 7, 1861, as Secretary of the Treasury, Salmon P. Chase found the United States' Treasury empty. Up to that time neither Mr. Chase nor even Mr. Lincoln had had any experience to speak of either on the executive or on the financial side. "What has this to do with the greenbacks or legal tender? You are getting far afield," will say the average publicist. But the lawyer at least will want to hear the answer. In the first place it was war, and in the second place, it was the cupidity of the allied bankers of New York, Philadelphia, and Boston,—they wanted a big premium for their depreciated bank notes. In the third place, it was their lack of experience and the want of executive capacity on Mr. Lincoln's* and Mr. Chase's† part that we have the greenbacks today.

* Post, 183.

† Post, 191.

It was charged then and has been since, that at the time he entered Mr. Buchanan's Cabinet in 1857, as Secretary of the Treasury, Howell Cobb of Georgia entered into a "conspiracy" to disrupt the Union by killing the credit of the Government of the United States. Mr. Cobb found the Treasury full and the bonds representing the national indebtedness—less than \$60,000,000—at a premium of 16 to 18 per cent. He soon got rid of the surplus by buying bonds at these high premiums, and long before he retired from the cabinet (December 10, 1860) to help promote secession, he was selling United States bonds in New York as low as 85 to get money to meet the ordinary expenses of the Government. It must be conceded that there is no better way to destroy a nation than by destroying its credit. But precision cannot be accorded to the leaders of the Confederacy. Rather it was the sheer inefficiency of the windjammer and the bluffer.

Alexander H. Stephens, who opposed the secession movement, but finally went out and became the Vice-President of the Confederacy, says it was a bluff, and that the men behind it believed the bluff would never be "called." All the circumstances of the times are conclusive that this is so. And when the final record is made up, the credit of "calling" it will have to be accorded to men less gifted, but more virile, than Abraham Lincoln, Salmon P. Chase or William H. Seward, namely, Elbridge G. Spaulding, Zachariah Chandler, Stephen A. Douglas and Benjamin F. Wade. They were the men who forced the issue. And the man who first turned Mr. Lincoln and the Secretary of the Treasury down on the financial side and said, "We will not borrow their paper money at ruinous rates of interest, from the rate-shaving shops of New York," was Elbridge G. Spaulding, a member of the Ways and Means Committee of the House of Representatives from the Buffalo, New York, District.*

Before we come to the actual putting over of the greenbacks

* Post, 144-183.

something must be said of the events and the men, whether by acts of omission or commission, who created or brought about the situation that made it necessary to adopt the system of money which up to that time it was believed by the fathers who drafted the Constitution should never obtain in this country,—in short, the Continental system of money. In our complicated form of society and government the man at the bottom may be as important, or more important a factor, as we will hereinafter show, than the man at the top. A small worm or small wrench may be as important in a complicated piece of machinery as the best engineer. The race is developed at the bottom.

In getting the moving intent, the lawyer and the doctor often go far afield.

CHAPTER IV

THE KANSAS-NEBRASKA BILL

DOUGLAS INTRODUCES BILL TO ORGANIZE THE TWO TERRITORIES, "WITH OR WITHOUT SLAVERY"—LINCOLN TAKES THE STUMP AGAINST THE BILL—"POPULAR" OR "SQUATTER" SOVEREIGNTY—WENDELL PHILLIPS DENOUNCES THE COMPROMISES ON SLAVERY—CHARACTERIZATION OF PHILLIPS—DOUGLAS'S MOTIVES—CALEB CUSHING AND JEFFERSON DAVIS SUPPORT DOUGLAS—OPPOSITION OF THE ANTI-SLAVERY MEN—LINCOLN A SENATORIAL CANDIDATE IN 1855—PROMINENCE OF LYMAN TRUMBULL IN ANTI-SLAVERY AGITATION—LINCOLN'S SECRET PLEDGE TO OWEN LOVEJOY—WM. H. HERNDON'S INFLUENCE ON LINCOLN'S POSITION ON SLAVERY—JEFFERSON DAVIS TURNS AGAINST "SQUATTER SOVEREIGNTY"—BUCHANAN ELECTED PRESIDENT ON DOUGLAS'S PLATFORM.

A BRAHAM LINCOLN had retired from politics, and everybody except the abolitionists, North and South, was making money, when on January 23, 1854, Senator Stephen A. Douglas, as chairman of the Committee on Territories, hurled a bomb into the Senate in the shape of a bill to organize the remaining portion of the Louisiana Purchase into two territories, Kansas and Nebraska, "with or without slavery, as the people might desire," and the purpose being, as the bill declared,—

"That Congress shall neither legislate slavery into any of the territories or states, nor out of the same, but the people shall be left free to regulate their own domestic concerns in their own way, subject only to the Constitution of the United States."

* Post, 92.

Mr. Lincoln quit the courtroom and took the stump against "this infamous measure,"* as a candidate for the United States Senate. That he did this without reflection or consideration, as he acknowledged in the debate with Senator Douglas at Peoria, October 16, 1854, in a speech which Horace White, the newspaper man and publicist, rates, as do the other historians, one of Lincoln's masterpieces, but which will not stand a legal analysis.† In this speech Mr. Lincoln said:

"Mr. Douglas should remember that he took us by surprise—astounded us, surprised us—by this measure. We were thunder-struck and stunned, and we reeled and fell in utter confusion. But we rose, each fighting, grasping whatever we could first reach—a scythe, a pitchfork, a chopping-ax, or a butcher's cleaver. We struck in the direction of the sound, and we are rapidly closing in upon him."

Douglas defined the principles behind the Kansas-Nebraska Bill as "Popular Sovereignty." Lincoln's term was "Squatter Sovereignty." But it is clear from what we have just quoted from Mr. Lincoln, that there was no legal objection to either "Popular" or "Squatter" Sovereignty. Indeed both were sound from every legal standpoint. The sovereignty of the people working through the States is the essence of the American system, and, as will appear, when the time came for Abraham Lincoln as Commander-in-Chief to say to the boys in blue, "Guide center! Forward!" it was under the banner of "Popular" or "Squatter" Sovereignty that he expected them to advance.

Even now we are returning to this principle. Every sane man is beginning to see that a great Moloch at Washington, governing every detail of personal and business conduct, means the breakdown of American civilization. The professional feminist wants a uniform divorce law throughout the United States. Without opposing the theory of divorce my observation in the courtroom is that there are too many for the good of the race. The frequency of the divorce was one of the

* Post, 105.

† Post, 132, note.

causes of the downfall of the Roman Republic. The argument in favor of a uniform bill of lading does not apply, for a bill of lading is an instrument of commerce and the power of Congress in its control of commerce is "plenary," as John Marshall said, in construing the words in Article 1, Section 3, of the Constitution,—“to regulate commerce with foreign nations, among the several States and with the Indian tribes.”*

According to that small party of abolitionists led by Wendell Phillips, the second compromise on slavery, that of 1820, and the third, that of 1850, both of which Mr. Lincoln supported, were makeshifts, illogical, illegal and *unconstitutional under the first*, or the pro-slavery “engagement,” that of 1787, between Massachusetts and South Carolina written into the Constitution, namely, Clause 1 of Section 9 of Article 1, legalizing the African slave trade for twenty years, the 3rd Clause of Section 2 of Article 1, which provides that three-fifths of a slave man should be counted as a voter, the master casting the vote, and Clause 3 of Section 2 of Article 3, providing for the return of fugitive slaves who were free according to the constitution of Massachusetts and the English law, and finally all were immoral.†

While Phillips‡ was a revolutionist,—he refused to obey the first compromise,—and had risked his life in the streets of Boston in resisting the return of fugitive slaves to Virginia, and had been indicted for murder and other crimes, he knew how to strike under the form of law under our peculiar State and Federal jurisdiction. He was as able and a braver advocate than Erskine,§ whom we will hereinafter quote, the best, it is said, that the English race has produced. Phillips had no children clinging to his coattails crying for bread to urge him on against the Fugitive Slave bill, lawyers and judges, as was Erskine’s case when he explained how he summoned up enough courage to face down Chief Justice Mansfield and his colleagues

* Gibbons vs. Ogden, 9 Wheaton 1, Post, 153.

† Post, 73.

‡ Post, 270.

§ Post, 270.

in the court of King's Bench. The advocate lawyer is not always the best lawyer.

Phillips was a better lawyer than Erskine, the best the American bar has produced. There was no graft in his makeup. The lawyer who accepts money for work in a moral or public cause is a grafter pure and simple. Tracing his lineage to the "Mayflower," he gave up his retainers to be free to represent the man who stood mute within our law. Only by working women and children, and overtime, had Massachusetts been able to lay up a small surplus. Slave labor was the most expensive in the world, so by all the rules of economics South Carolina was bankrupt. "Speed her departure, for her declaration of independence will be the jubilee of the slave." He disavowed all pretense to statesmanship, for that involved consideration for the puppets who posed as statesmen and their deluded followers. He was a simple lawyer arguing his case. He made mincemeat of the doctrine "My country right or wrong."

On his death-bed at Marshfield, October 25, 1852, Daniel Webster attested, to quote Milton, Phillips' "power and excellence." "He and a few fanatics possess more influence than I and all the public men in America."*

On the 27th of January, 1853, speaking before the Massachusetts Anti-Slavery Society on the Compromise of 1850 and the philosophy of the Anti-Slavery movement, Phillips uttered this warning to the public men then living:

* George William Curtis at Boston, April 18, 1884, said of Phillips:

"When Wendell Phillips was admitted to the bar in 1834, the slave interest in the United States, entrenched in the Constitution, in trade, in the Church, in society, in historic tradition, and in the prejudice of the race, had already become, although unconsciously to the country, one of the most powerful forces in the world. The old French monarchy in 1780, the English aristocracy at the beginning of the century, were not so strong as slavery in this country fifty years ago. The grasp of England upon the American colonies before the revolution was not so sure, and was never so menacing to liberty upon this continent, as the grasp of slavery upon the Union in the pleasant days when the young lawyer sat in his office careless of the anti-slavery agitation, and jesting with his old college comrades over clients who did not come.

"For his great work in arousing the country and piercing the national conscience, Phillips was especially fitted not only by the commanding will and genius of the orator, but by the profound sincerity of his faith in the people. The party leaders of this time had a qualified faith in the people. His was unqualified."

"At present, our leading men, strong in the support of large majorities, and counting safely on the prejudices of the community, can afford to despise us. They know they can overawe and cajole the Present; their only fear is the judgment of the Future. Strange fear, perhaps, considering how short and local their fame! But, however little, it is their all. Our only hold upon them is the thought of that bar of posterity, before which we are all to stand. Thank God! There is the elder brother of the Saxon race across the water,—there is the army of honest men to come! Before that jury we summon you. We are weak here—out-talked, out-voted. You load our names with infamy and shout us down. But our words bide our time. *We warn the living that we have terrible memories*, and that their sins are never to be forgotten. We will gibbet the name of every apostate so black and high that his children's children will blush to bear it. Yet we bear no malice,—cherish no resentment. We thank God that the love of fame, 'that last infirmity of noble mind,' is shared by the ignoble. In our necessity, we seize this weapon in the slave's behalf, and teach caution to the living by meting out relentless justice to the dead. . . . While drunk with the temptations of the present hour, men are willing to bow to any Moloch. When their friends bury them, they feel what bitter mockery, fifty years hence, any epitaph will be, if it cannot record of one living in this era some service rendered to the slave. These, Mr. Chairman, are the reasons why we take care that the memory of the wicked shall rot."

Speculation as to Douglas's motive was and is wide. Our theory is that he planted himself on the fundamental American doctrine of local self-government.* His speeches reveal that he realized "the power and excellence" of Phillips' propaganda. Assuming it was not a question of morals with Douglas, he "beat Lincoln to it," for it will presently appear not only that Phillips lined up behind him but that Lincoln, after stating at the conclusion of the Anti-Nebraska Campaign of 1854 that if the Missouri line could be restored he would quit politics and would agree that Douglas could be Senator for life, inside

* Section 8 of the Missouri Compromise was subsequently declared unconstitutional.

of sixty days secretly agreed to abandon the Missouri Compromise in order to get abolitionist votes in the Illinois legislature for United States Senator.

While the Abolitionists and the extreme pro-slavery men except Jefferson Davis did not at first acquiesce in Douglas's new theory,—none of the pro-slavery men in the Senate had been consulted about it, not even President Pierce,—Douglas secured the legal opinion of Caleb Cushing, the Attorney-General, that it was sound in principle and, through Cushing's influence and the political aid of Jefferson Davis, it was made an administrative measure.

Caleb Cushing was one of the best lawyers the nation has produced. His personal relations with Jefferson Davis were always very intimate even after the Civil War. He had been a Webster Whig, and his training as such, aside from his legal attainments, explains his opinion as well as its soundness. "Squatter Sovereignty" was the central idea in Webster's 7th of March speech. Cushing's biographer says he cannot account for it. As Thaddeus Stevens would say, the biographer was not a lawyer. He intimates that Cushing was misled and that Douglas would have retreated before the storm if he could have done so. Exactly the contrary is the fact. Ward H. Lamon, one of Mr. Lincoln's best informed biographers, records this of Douglas: "When asked if he knew precisely where his present course was taking him he answered, 'I do. I have bought a through ticket and I have checked all my baggage'." All the debates down to and including that in the special session of the Senate (begun March 4, 1861) for the convenience of Mr. Lincoln's administration prove this.*

One theory is that Douglas split up Kansas into two ter-

* "Douglas has been abused, slurred over, and written down so much, that his high place and inestimable services to our country have been altogether too much overlooked. He became the leader of the Northern, or Free State, Democracy in 1845-49 and never lost it. He could have been nominated for President at either of three Conventions before 1860, if he had been willing to make the concessions that Cass, Pierce, Marcy and Buchanan were only too willing to make. . . ."

"He was approached by one of the prominent Southern Senators, with the proposal, that if he would withdraw this amendment (leave it to the people of Kansas whether they would have slavery or not), the South would agree to his nomination for President in 1856. He very promptly declined doing so."—Robt. H. Browne.

ritories at the instance of the men who were behind the Pacific railroads.* "Squatter Sovereignty" has since been demonstrated to be an essential to a trans-continental line. According to the traditions that have come down through Kentucky from men who knew Henry Clay and John C. Breckenridge, Jefferson Davis was the first man to propose a Pacific railroad but it was to be a Southern route. Afterwards Davis made a speech in the Senate in favor of it. A Pacific railroad and "Squatter Sovereignty" Davis thought would carry slavery to the Pacific coast. But the squatters, in 1849, organized California as a Free State. It is therefore illogical to urge that it was at the instance of the pro-slavery party that Douglas introduced the Kansas-Nebraska bill. Assuming the latter theory is true, and we doubt it, Douglas stayed by it while Davis did not, and moreover claimed that Douglas had "put it over on him."

The prohibitionists said that Senator Douglas drank too much "hard liquor." He answered, "If Kansas wants the Maine liquor law, she can have it." Maine was then the only "dry" State in the Union. In short, Douglas was for local self-government, the right of each State or community to regulate its own domestic affairs.

The claim of this right is what led to the contest with the British King and its recognition by the Crown and the Parliament since our success has strengthened and consolidated the British Empire. On his side Douglas quoted "The Fathers" and the two greatest men of his time, Daniel Webster and Henry Clay, then less than two years in their graves. Undoubtedly the whiskey that he drank helped to shorten his life, for he died at the early age of 48. And the same can be said of "Zach" Chandler, who became one of the strongest men on the executive side these United States of America have ever produced—all of which will presently appear. The anti-slavery men opposed the bill because they feared the majority of the squatters would favor slavery, and the pro-slavery men were

* Post, 74.

in doubt but deferred to Cushing and Davis and to the force of Douglas's argument.

In the debate that followed in the Senate, Mr. Douglas got the better of the pro-slavery men who doubted, and of the anti-slavery men like Seward and Chase, Sumner and Wade, and the pro-slavery leaders generally, by arguing that in 1848 they had refused to extend the Missouri line to the coast and from the premises admitted by all, that inasmuch as a State was free in adopting its own domestic institutions, either with freedom or slavery when it organized, that that right ought to be extended to the embryo State—the territory—as soon as it was authorized to convene a legislature. It was signed by President Pierce, May 2, 1854. In time it had the sanction of the abolitionist and the man of iron, "Ben" Wade. So we conclude that Douglas's legal mind evolved an organization within the American system that was constitutional, and put the question of slavery or no slavery up to the people.

But at the jump-off the scythe, the pitchfork, the chopping ax and the butcher's cleaver which Mr. Lincoln so vigorously wielded on the anti-Kansas-Nebraska propaganda carried the elections in November, 1854.

It elected a majority of the lower house in Congress. And in the Illinois Legislature, before which Mr. Lincoln became a candidate for United States Senator against Senator Shields, Senator Douglas' man, the anti-Nebraskans had a majority of four, of whom one was Abraham Lincoln, himself a member of the legislature from Sangamon County. As a conservative on the slavery question, Judge Stephen D. Logan in that county had pulled through the legislative ticket of five. Mrs. Lincoln had opposed her husband's going on that legislative ticket. He had not been out in the open for the Senate before the election. She was right. She married him to make him president, and she undoubtedly had a hand in the making which may account for some of his inconsistencies on the slavery question. She was pro-slavery in all her antecedents and had the horror

of the Southern woman for the Abolitionists. That she was a woman of ability far above the average of her sex cannot be gainsaid. That she knew the effect of the institution on the Southern men may have accounted for her advice in urging her husband to go through Baltimore at night instead of in daylight, and not to stop to hold a public reception there on the way to the inauguration. The Abolitionist would have gone through in daylight, and started the rough-house right there, first calling on President Buchanan and General Scott to throw a few of the Federal troops he had assembled in Washington into Baltimore to handle the threatening mob. Douglas would have gone along to meet the president-elect. As we will show hereinafter, President Buchanan had turned against the extreme Southern men, the higher ups, and with the aid of Federal troops, was preparing to make his successor's inauguration peaceable. The protection President Buchanan accorded to the President-elect in the city of Washington* from February 23 to March 4, 1861, he could have and would have extended him in Baltimore, and would have gladly done so had Senator Seward apprised Mr. Buchanan of the purpose of the Baltimore mob. Buchanan was the most surprised man in Washington at Mr. Lincoln's sudden and unannounced arrival.†

The reaction from the scythe and the pitchfork was swift. After the election and before the legislature met, it was mani-

* Post, 97, 98, 100.

† Despatch to the "Chicago Tribune" from Washington, February 25, 1861:

"Washington—The first report of a plot to assassinate Mr. Lincoln came to him at Harrisburg, when, after he had disrobed for the night, a man of high prestige came to him and told him that an organized body of men had determined that he should not be inaugurated and that he should never leave the city of Baltimore alive, if indeed he ever entered it. The list of names of the conspirators presented a most astonishing array of persons high in southern confidence. Mr. Lincoln was to have left Harrisburg at 9 o'clock in the morning. The plan was to derail the train if possible at some vantage point, then the assassins were to rush down the embankments and kill all on board. If this scheme failed, the plan was to surround the President-elect's carriage as he went between depots in Baltimore, Washington, and assassinate him with dagger or pistol. Despite the warning, Mr. Lincoln insisted on holding the Baltimore reception, but Mrs. Lincoln and his friends finally prevailed upon him to take a special train to Washington at once. He wore a Scotch plaid cap and a very long military coat, so that he was entirely unrecognizable. He was accompanied by Superintendent Lewis and one friend, Ward H. Lamon. Thus, while all but Mrs. Lincoln, Mr. Judd, Col. Sumner, and two reporters who were sworn to secrecy believed him asleep, he passed through Baltimore and on to Washington."

fest that Mr. Lincoln could not with propriety as a member of the legislature vote for himself for United States Senator. He resigned, and at the special election that followed in Sangamon County, before the legislature met, the Squatter or the Douglas Kansas-Nebraska Democrat beat the Whig Lincoln anti-Nebraska candidate by a good round majority. This reduced the anti-Kansas-Nebraska majority to two.

And then the Abolitionists went after Father Abraham.

Owen J. Lovejoy was the leader of the Abolitionists in that Illinois legislature that assembled in January, 1855.

On the night of the 8th of October, 1837, the Rev. Elijah P. Lovejoy, an elder brother of Owen J., age twenty years, had been murdered by a mob at Alton, Illinois, and his press destroyed, because he had been publishing an Abolitionist newspaper, in which he reasoned against slavery as being sinful, and a moral and political evil. The story is that, as Elijah's life blood ebbed out, Owen bent over his brother's body and swore eternal vengeance on the slave power and any supporter of and compromiser with it. It is history that his crusade was the most effective of all in Illinois against slavery. Wendell Phillips made the murder of Elijah the occasion, at the memorial services in Faneuil Hall in Boston, for the best speech ever delivered on this side of the Atlantic.

"As much as thought is better than money, so much is the cause in which Lovejoy died nobler than any mere question of taxes. James Otis thundered in this hall when the parliament did but touch his pocket; imagine if you can, his indignant eloquence had the British King offered to put a gag upon his lips."

Lyman Trumbull, the coming anti-slavery Democrat of Illinois, wrote, four days after the murder, "Had I been in Alton, I would have cheerfully marched to the rescue of Mr. Lovejoy and his property."

Writing of the senatorial election of 1855, Mr. Lincoln's friend and biographer, Ward H. Lamon, says:

"The Abolitionists suspected him [Lincoln] and were slow to come to his support. Judge Davis went to Springfield, and thinks he 'got some' of this class 'to go to' him; but it is probable they were 'got' in another way. Mr. Owen J. Lovejoy was a member, and required, as the condition of his support and that of his followers, that Mr. Lincoln should pledge himself to favor the exclusion of slavery from *all* the territories of the United States.

"This was a long step in advance of any that Mr. Lincoln had previously taken. He was, as a matter of course, opposed to the introduction of slavery into the Territories north of the line of 36° 30'; *but he had, up to this time, regarded all south of that as being honestly open to slavery.* The villainy of obliterating that line, and the necessity of its immediate restoration,—in short, the perfect sanctity of the Missouri settlement,—had formed the burden of all his speeches in the preceding canvass. *But these opinions by no means suited the Abolitionists, and they required him to change them forthwith.* He thought it would be wise to do so, considering the peculiar circumstances of his case; but, before committing himself finally, he sought an understanding with Judge Logan. Stephen T. Logan had been a partner of Mr. Lincoln and had succeeded Mr. Lincoln as the Whig candidate for Congress in the Springfield district, if the judge would not regard it as 'treading upon his toes' for Lincoln to make the pledge.

"The judge said he was opposed to the doctrine proposed; but, for the sake of the cause in hand, he would cheerfully risk his 'toes.' And so the Abolitionists were accommodated: Mr. Lincoln quietly made the pledge, and they voted for him.

"In fact, he maintained a singular reticence about the whole affair, probably dreading to go into it too deeply, lest his rival should unearth the private pledge to Lovejoy, of which Judge Logan has given us the history."

And when the legislature met such was the weakness of the scythe and pitchfork, and such the force and power of the Douglas platform, that there were five anti-slavery, anti-Nebraska Democrats in that 1855 legislature who afterwards

became Republican, who refused to vote for Mr. Lincoln for United States Senator, viz., Norman B. Judd, of Chicago; John M. Palmer, of Carlinville, afterwards a Union General and United States Senator; Burton O. Cook, of Ottawa; Henry L. Baker and G. T. Allen, of Madison County. These men voted for Lyman Trumbull.

The first ballot was Trumbull 5, Lincoln 45, Shields 41, scattering 8.

Lyman Trumbull was born and educated in Connecticut. After teaching school in Georgia for three years, in 1837, at twenty-four years of age, he settled in Belleville, St. Clair County, Illinois, and took up the practice of law. In 1840, he was elected to the Illinois legislature as a contemporary of Abraham Lincoln, E. D. Baker, William A. Richardson, John J. Hardin, John A. McClernand, William H. Bissell, Thomas Drummond and Stephen A. Douglas. He was a member of the Supreme Court of Illinois from 1848 to 1851.

As the anti-slavery lawyer in Illinois, Trumbull surpassed them all. In Harris's "Negro Servitude in Illinois,"* a most excellent work, the only other lawyers enrolled on the scroll of fame are G. T. M. Davis of Alton, Nathaniel Niles of Belleville, Gustav Koerner of Belleville and James H. Collins of Chicago. "Abraham Lincoln's name does not appear." But Harris and Horace White, the newspaper man and Trumbull's biographer, give Trumbull too much credit, more than he himself ever claimed. He did not abolish slavery and involuntary servitude in Illinois by the last lawsuit he won as a lawyer in the Supreme Court of Illinois in 1845.

A promise to recognize and protect the property of the French and their slaves had greatly contributed to George Rogers Clark's conquest of Kaskaskia and Vincennes. General St. Clair, the first governor of the Northwest Territory, held with Washington's consent that the Ordinance of July 13, 1787, did not apply to slaves then in existence. Some were

* A. C. McClurg & Co., Chicago.

"infants," who lived down to the Civil War. Then, under an act of the Indiana Territory legislature of 1803, repealed in Indiana but validated by the Illinois constitution of 1818, providing for indentures for forty, fifty and ninety years and known as the Black laws, slavery was perpetuated in Illinois. In every case Trumbull advised "the indentured slaves" to resist. In lawsuit after lawsuit between 1840 and 1845, Trumbull was unsuccessful but he eventually won one in the Supreme Court of Illinois—*Jarrett vs. Jarrett*—that extended instead of restricted the application of the Ordinance of July 13, 1787.* The prohibition against involuntary servitude in the ordinance, ran against something more than chattel slavery. Trumbull with his due process of law, inadequate considerations, signature by "mark," trial by jury and habeas corpus proceedings, as provided for in the ordinance, only, to use one of Horace White's expressions, merely scotched the viper.

But all of Trumbull's lawyer-and-judge-made law was swept aside by the National Fugitive Slave law of 1850, drawn under the third clause of the second section of Article 4 of the Constitution of the United States, which provided that "on claim of the" owner or alleged owner the runaway or fugitive or alleged runaway should be delivered up without a jury trial or habeas corpus proceeding to the alleged owner in any of the so-called Free States, even in the five great Free States of Ohio, Indiana, Illinois, Michigan and Wisconsin carved out of the Northwest Territory, notwithstanding that the guarantees written in "the ordinance" should be perpetual.

On Trumbull's part, in 1840 and 1845, it was a thankless task—in keeping with Phillips' policy of agitation—always performed without compensation in addition to advancing the court costs. This service of Trumbull's, Harris records, was

* Article 6—"There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in punishment of crime, whereof the party shall have been duly convicted; provided, always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original states, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her service as aforesaid."

often attended with great risk to his person as well as to his business reputation. And it was this service that so well qualified him twenty years later as chairman of the Judiciary Committee of the United States Senate to write the Thirteenth Amendment prohibiting slavery and involuntary servitude in Illinois as well as in South Carolina, and made it impossible for him to agree with Abraham Lincoln, as a peace offering to South Carolina in 1861, to make slavery express and irrevocable by a Thirteenth Amendment.* "And never," as his biographer said, and as will be hereinafter shown, "was he ever intimidated by the number or the prestige of his opponents."

As the balloting proceeded, Lincoln lost and Trumbull gained, and when on the sixth ballot Trumbull lost and it became evident the Anti-Nebraska Democrats were coalescing on Governor Matteson, a Douglas Democrat, Mr. Lincoln transferred his votes on the eighth ballot to Lyman Trumbull and Trumbull was elected. Mrs. Lincoln was in the State House during the balloting, accompanied by her bridesmaid, Julia Jayne, then the wife of Lyman Trumbull. Judge Trumbull became a Republican with the organization of that party, and one of its staunchest constitutional leaders. But he left it in 1868 when he led and voted against the impeachment of Andrew Johnson.†

Mr. Lincoln's deal with Lovejoy illustrates the unsoundness of the Missouri Compromise line, and opened up to the Abolitionists some of the virtues of "Squatter Sovereignty."

This secret pledge of Mr. Lincoln to Owen Lovejoy gives rise to the following reflections by Mr. Lamon:

"It cannot be denied that, when he was first a candidate for the Legislature, his views of public policy were a little cloudy, and that his addresses to the people were calculated to make fair weather with men of various opinions; nor that, when first a candidate for United States Senator, he was willing to make a

* Post, 107.

† Post, 176.

secret bargain with the extreme Abolitionists, and, when last a candidate, to make some sacrifice of opinion to further his own aspirations for the Presidency. The pledge to Lovejoy and the 'House-divided Speech' were made under the influence of personal considerations, without reference to the views or the success of those who had chosen and trusted him as a leader for a far different purpose. But this was merely steering between sections of his own party, where the differences were slight and easily reconciled,—maneuvering for the strength of one faction today and another tomorrow, with intent to unite them and lead them to victory, the benefits of which would inure to all. He was not one to be last in the fight and first at the feast, nor yet one to be first in the fight and last at the feast. He would do his whole duty in the field, but had not the slightest objection to sitting down at the head of the table,—an act which he would perform with a modest, homely air, that disarmed envy, and silenced the master when he would say, 'Friend, go down lower.' His 'master' was the 'plain people.' To be popular was to him the greatest good in life. He had known what it was to be without popularity, and he had known what it was to enjoy it. To gain it or to keep it, he considered no labor too great, no artifice misused or misapplied. His ambition was strong; yet it existed in strict subordination to his sense of party fidelity, and could by no chance or possibility lure him into downright social or political treasons. His path may have been a little devious, winding hither and thither in search of greater convenience of travel, or the security of a larger company; but it always went forward in the same general direction, and never ran off at right angles toward a hostile camp. The great body of men who acted with him in the beginning acted with him at the last.

"On the whole, he was an honest, although a shrewd, and by no means an unselfish politician. He foresaw which way the world began to draw, and instinctively drew with it. He had convictions, but preferred to choose his time to speak. He was not so much of a Whig that he could not receive the support of the 'nominal' Jackson men, until party lines were drawn so tight that he was compelled to be one thing or the other. He was not so much of a Whig that he could not make a small diversion for

White in 1836, nor so much of a White man that he could not lead Harrison's friends in the Legislature during the same winter. He was a firm believer in the good policy of high 'protective tariffs'; but, when importuned to say so in a public letter, he declined on the ground that it would do him no good. He detested Know-Nothingism with all his heart; but, when Know-Nothingism swept the country, he was so far from being obtrusive with his views, that many believed he belonged to the order. He was an anti-slavery man from the beginning of his service in the Legislature; but he was so cautious and moderate in the expression of his sentiments, that, when the anti-Nebraska party disintegrated, the ultra-Republicans were anything but sure of his adherents; and even after the Bloomington Convention he continued to pick his way to the front with wary steps, and did not take his place among the boldest of the agitators until 1858, when he uttered the 'House-divided Speech,' just in time to take Mr. Seward's place on the Presidential ticket of 1860."

According to Lamon it was Mr. Wm. H. Herndon, Mr. Lincoln's law partner, who brought Mr. Lincoln out, as an out and out Anti-Slavery man. Herndon, according to Lamon, was an Abolitionist before he was born. "He held himself no party to the compromises* of the constitution, nor to any law which recognized the justice of human bondage; and he was therefore free to act as his God and nature prompted." But he was as ambitious for his partner as his partner was ambitious for his own political advancement. And while in the secret confines of his office he fed Lincoln all the Abolitionist literature, he held him back from committing himself to the Abolitionist cause. He even advised Lincoln to flee from Springfield, in 1854, to escape receiving an invitation from Owen Lovejoy to attend a meeting at the State Fair of all in favor of freedom, for fear it would identify Lincoln with the Abolitionists who were then few in numbers but powerful in their propaganda. When they should be all-powerful, as Herndon believed they would be, he did not want it said that

* Ante, 60.

Lincoln was afraid to meet with them. And so Lincoln hitched up his one-horse buggy, got little "Thad," and gave it out that he had to go to Tazewell County on business. When the cause had advanced and they were ready to form the party for freedom, Herndon issued the call and Mr. Lincoln responded. Mr. Lincoln's letters to his young partner, when he was in Congress in 1848, show that he was not unmindful of the views of that young man and that the young man was most critical of his senior and congressman, and that Mr. Lincoln was not re-nominated, as the young man we have just mentioned intimated he should not be. Instead, Judge Stephen D. Logan was nominated.

But in Kansas, Douglas and "Squatter Sovereignty" won. Even before the Kansas-Nebraska bill was signed, Zachariah Chandler, the late defeated Whig candidate for governor of Michigan, who was then planning to break up the Whig party, was staking men in Michigan for Kansas. Some of them were afterwards killed. The same was true of other Northwestern States. Soon Wendell Phillips was backing the squatters. John Brown was one of them. Before Massachusetts and Connecticut had organized Kansas Immigrant Societies, the squatters from the Northwest, as the saying is, had beat the Missourians to it. Even with Missouri adjoining, the Free State men out-voted the Pro-Slavery men at every fair election and "had the goods on them" at all the unfair elections.

In 1855 Governor Reeder set aside the first election because of the fraudulent voters imported from Missouri. He was promptly removed by President Pierce. Jefferson Davis changed sides and, as Secretary of War, wanted to use the six thousand United States troops he had sent to Kansas to suppress the squatters, but President Pierce was afraid to go that far.

Then Jefferson Davis said Douglas had "put it over on him"* and he turned against "Squatter Sovereignty." He no-

* Ante, 63.

where says that Douglas told him that "Squatter Sovereignty" would make Kansas a Slave State. And although Douglas many times in debate pressed him hard and showed that he had in 1848 supported the idea of home rule in the territories and General Cass for the presidency, Davis never claimed that Douglas deceived him in "putting it over on him." All he ever claimed was that if he had known that the squatters would have beaten them, or that it could be claimed that the first settlers could determine the slavery question in a territory, he could not have given his support to the Kansas-Nebraska Bill. That the National Government, under what Wendell Phillips said was "that pro-slavery constitution," should protect slavery in the territories, became Jefferson Davis's position after he saw the practical effect of "Squatter Sovereignty." The anti-slavery men who became Republicans claimed the constitution was a free constitution and consequently carried freedom into Kansas.

Phillips rejected this sophism of the Republicans and went behind the squatters, especially John Brown. And while Mr. Lincoln's partner, by depreciating Douglas in letter after letter while he was holding Lincoln back, gained the support of Abolitionists like Theodore Parker, he never gained that of Wendell Phillips.

The Southern brother is strong for the Constitution when he thinks it is his way. He was for "Squatter Sovereignty" when he thought it carried slavery into Kansas. He has no compunction about dispensing the Fifteenth Amendment, and it must be conceded that there is almost universal acquiescence therein on the part of the North. It is the South that insisted on an amendment originating in Kansas that its advocates concede could not prevail on a referendum in a number of States. The prohibition lawyers and Southern proponents should remember that the Federal bayonets could not make Kansas a Slave State and that the Federal bayonets did not make voters of negroes in South Carolina. Slavery was written

clearer and deeper into the original Constitution of the United States than is "prohibition" in the present.

The Fugitive Slave Law of 1850 contained all the provisions that the most extreme of the present prohibitionists demand. Aside from making every man and woman a "nigger catcher," it denied the alleged fugitive or slave a jury trial. "In no trial or hearing under this Act shall the testimony of such alleged fugitive be admitted in evidence. No writ of habeas corpus shall issue to release an alleged fugitive." Assuming that such provisions if incorporated into the Volstead Act would be constitutional, and they would not be, still it must be food for thought to the gentleman from Texas, the author of the Eighteenth Amendment, and our good honest, well-meaning, but misinformed prohibitionists north of the Mason and Dixon line, that the Fugitive Slave Law of 1850 was not enforced and could not be enforced. A resort to the pistol and bowie knife and pains and penalties of the law are not the best way to bring about acquiescence in a moral, economic measure.

Turning from "Squatter Sovereignty" when he found it was against his theory of morals, Jefferson Davis, as the President of the Confederate States of America, became, as we will show, the proponent of all that was despotic in our form of government. He was the embodiment of the idea of the super government as contradistinguished from the small unit. This will appear when we get to the Mid-Civil War period.* For a time the super or despotic or the absolutism of a few men ruling the world as from afar may be the ideal system and that to which we will come, but it is not the American system. The small unit, with the people in control, the fathers divined—even with the virus of slavery in the blood—would make the American Republic great and powerful and meanwhile purify the blood.

As the leader of the pro-slavery party Jefferson Davis was more virulent in his opposition to Douglas than he ever was

* Post, 164.

to Mr. Lincoln. "Squatter Sovereignty" in its ultimate analysis meant revolution at home and in the States. Davis soon divined Douglas's purpose even though the historians do not yet understand it.

In 1856 Douglas, at Cincinnati, held his party to "Squatter Sovereignty" and elected James Buchanan President on that platform. Democrats who in 1854 had voted against the Kansas-Nebraska Bill voted for "Squatter Sovereignty" in 1856.

The Republican party was formally organized in February of that year, at Pittsburgh, with a peremptory platform against slavery in the territories, as before stated.

And while Zachariah Chandler became a Republican and was elected to the Senate from Michigan in January, 1857, he never lost sight of the opportunity the Kansas-Nebraska Bill gave to "rough-house" it. All Chandler wanted was an even break in the territories. He was the leader in this, working under the Kansas-Nebraska Bill. A fight was the last thing slavery could survive. In handling an election, voting early and often, sometimes in a hat, crying fraud and proving it on the other fellow, Chandler was a past master.*

Bluff "Ben" Wade was Chandler's only counterpart. Senator Benjamin F. Wade of Ohio after an elaborate speech against the Kansas-Nebraska Bill became more even than Douglas the advocate of "Squatter Sovereignty," and Chandler went with him. After the assault on Sumner, Wade, in denouncing it, used language to Senator Toombs of Georgia that the Southern men said demanded a challenge. One of the best lawyers of his time, Wade was known to be a dead shot and he kept in practice. The challenge never came. In response to an inquiry from a friend of Toombs as to how a challenge would be received, Wade answered, "Rifles at twenty paces. I will pin a piece of paper on the d—d scoundrel's heart the size of a silver dollar, and if I don't hit it at the first

* Post, 93.

shot, he can shoot at me all day." Soon after Chandler came, and one of the stories was that the two served notice on the Southern men that physical force would be met with force without waiting for a formal challenge. Chandler one day opened his desk and revealed a brace of revolvers, after he had cursed Davis across the aisles. There has never been anything like the personal bitterness that then existed, according to the word that has come down, but not in writing.

From the day Ben Wade backed Toombs down Wade and Chandler were the American dictators* until Lyman Trumbull refused to go along and vote for Andrew Johnson's impeachment. It was not that Senator Benjamin F. Wade, president pro tempore of the Senate, was unfit to be president, but it would have wrecked our constitutional system to have impeached the president without adequate cause. And to Trumbull, President Johnson, as will be hereinafter shown, had acted not only with bad faith but more offensively than he had to Wade and Chandler.

* Post, 176, 185.

CHAPTER V

THE FIGHT FOR KANSAS

ZACHARIAH CHANDLER SUPPORTS THE KANSAS-NEBRASKA BILL—THE DRED SCOTT DECISION—THE LECOMPTON CONSTITUTION DEFEATED IN KANSAS—DOUGLAS'S PACT—LINCOLN JEALOUS OF DOUGLAS—DOUGLAS FORCES LINCOLN'S HAND—THE HOMESTEAD BILL—DOUGLAS'S MOTIVES CHALLENGED BY LINCOLN—DOUGLAS VINDICATES HIMSELF WITH THE ABOLITIONISTS—LINCOLN'S VACILLATION—SENATOR WADE CHARACTERIZED—THE HOMESTEAD BILL PASSES THE SENATE.

ZACHARIAH CHANDLER, *per se* an anti-slavery man and not a lawyer, was not concerned with any fine-spun legal theories. Moreover, he was embarrassed by no past declarations against the Kansas-Nebraska Bill. And hence it was that he took the lead in 1858 as a new Senator, and as the Confederate Chieftain says he did in the Spring of 1861.* His financial independence gave him a power that "Ben" Wade did not possess. As a speculator, Wade had failed, and had spent many of his best years in paying his creditors. The gambler or business man who goes broke, although he may recoup, never has quite the assurance of the man who rides the financial storms without a failure.

Senator Chandler never liked William H. Seward, and he never accepted Seward's leadership. Of him Chandler said afterwards, "He is morally, physically and intellectually an imbecile and a coward."† For Jefferson Davis also, Chandler conceived a dislike from the start. They reached the Senate March 4, 1857, as Chandler said, as Jefferson Davis stepped

* Post, 110.

† Post, 113, 151.

out of President Pierce's cabinet and, "with treason in his heart and with perjury on his lips stood up in the Senate of the United States before Almighty God and swore to support the Government he meant to destroy."

In his inaugural address, March 4, 1857, Mr. Buchanan admonished all to give heed to the Supreme Court for it would soon make a ruling that would decide the slavery question. The Dred Scott case had then been argued twice. On April 7, 1857, the case was decided, by a divided court, first, that Section 8 of the Missouri Compromise, making slavery unlawful north of the line of 36° and 30' and leaving it, by implication at least, to be lawful south of that line, was unconstitutional, and second, that a person whose ancestors were of African birth and who had been brought into this country and sold as a slave, could not be a citizen of the United States nor sue in the United States Court. Chief-Justice Taney advised an amendment to correct some of the harsh and inhuman rules that existed at the time the constitution was adopted.

The anti-slavery people denounced the Chief-Justice while the pro-slavery men claimed the decision carried their slaves into the territories. Associate Justice James A. Campbell of Alabama,* a Georgian by birth, concurred in the judgment of the court, but in an opinion which is one of the most lucid and convincing in all legal literature, vindicated the soundness of the "Squatter Sovereignty" idea. The colonists did not defeat the British King in order to create another government popular in form, that would be all-powerful in the territories. Only a Norman lawyer of William the Conqueror's time would advance such a claim in America, concluded Campbell.

The fight became hotter than ever in Kansas. By the time Congress met, in December, 1857, President Buchanan had gone over to the pro-slavery side, and on the 7th of December, 1857, repudiated "Squatter Sovereignty" and recommended the admission of Kansas as a State, against the wishes of the

* Post, 187

squatters, who were in a large majority, or under the constitution adopted at Lecompton contrary to the provisions of the Kansas-Nebraska Bill, that is, without a referendum. On the 11th day of December, in a formal address, Senator Douglas denounced the pro-slavery party and the administration as undemocratic, and at a caucus that soon followed he was removed from his position as Chairman of the Committee on Territories.

To be specific, on the 2nd day of February, 1858, President Buchanan sent a special message to Congress urging the admission of Kansas under the Lecompton Constitution, declaring it was as much a Slave State as Georgia.

Meantime, under the inspiration of Douglas' speech, the anti-slavery men, on the 4th of January, 1858, voted down the Lecompton Constitution and turned in and elected a full set of State officers and sent their protest to Senator Douglas against the State of Kansas being admitted under the Lecompton or pro-slavery constitution.

Not only to Mr. Lincoln was it a matter of chagrin, but it was a great source of mortification to the old leaders of the Senate, that the anti-slavery men of Kansas or the squatters should prefer that "shifty, slippery politician" from Illinois as their spokesman and their lawyer on the floor of the Senate. Senator Douglas not only denied that Kansas was a Slave State, but he filed the protest of the State or Territorial officers of Kansas against Kansas coming in as a Slave State, and called on the President for all the election returns, claiming they would show that the people were overwhelmingly for making Kansas a Free State and that Buchanan had repudiated the platform on which he had been nominated and elected.

The scholars, like William H. Seward, Lyman Trumbull, and Senator William Pitt Fessenden of Maine, made speeches going back and attacking the principle of the Kansas Bill. Again Senator Davis intervened and suggested the personal accountability of a gentleman for his utterances. Fessenden's speech was the best of the series, as Horace White wrote in

his life of Lyman Trumbull. But the records of the Senate of that time show that Fessenden avowed his fears of the Senator from Mississippi and backed away from him.

But not so "the cobbler of Nantucket," Henry Wilson, Charles Sumner's colleague. He gave the Southern men the defy. And then there was the meeting of the practical men of the Senate with the "Little Giant," of which, on the 23d of February, 1858, Senator Wilson wrote to Theodore Parker, who had preached a funeral oration on Daniel Webster that made good Phillips' threats that they would warn the living by meting out remorseless justice to the dead:

"I leave motives to God, but he [Douglas] is to be with us, and he is today of more weight to our cause than any ten men in the country. I know men and I know their power, and I know that Douglas will go for crushing the slave power to atoms. To use his own words to several of our friends this day, in a three hours' consultation, 'We must grind this administration to powder, we must punish every man who supports this crime, and we must prostrate forever the slave power which uses Presidents, dishonors and disgraces them.'"

The pact that day was religiously kept.* In the end it was the salvation of the Lincoln administration and of the Nation. And so we may be permitted to differ from the historians and publicists who rate Stephen A. Douglas as shifty and insincere, but to agree with them that he was the most powerful political leader of the republic. Even his biographers do not do him justice. They write him down as immoral because he said, "I don't care whether slavery is voted up or down. I will leave it to the people of Kansas to determine whether they will have slavery or not." Judging as to what would happen by what did happen he had the foresight to see that he was constructing a system by which his followers would fight for the government of Kansas—a system that would have made Virginia a free colony, it is said.

* Post, 92.

Ward Lamon says:*

"Mr. Douglas' great success in obtaining place and distinction was a standing offence to Mr. Lincoln's self-love and individual ambition. He was intensely jealous of him, and longed to pull him down, or outstrip him in the race for popular favor, which they united in considering 'the chief end of man.'"

Nowhere is there any evidence that Stephen A. Douglas had such sentiments as to Abraham Lincoln.

Writing in 1858, after the February pact of that year between the men of force and Douglas, Herndon, Lincoln's law partner, records of Mr. Lincoln:†

"He already envied the ascendancy and domination Douglas exercised over his followers, and felt keenly the slight given him by others of his own faith whom he conceived were disposed to prevent his attaining the leadership of his party. I remember early in 1858 of his coming into the office one morning and speaking in very dejected terms of the treatment he was receiving at the hands of Horace Greeley. 'I think Greeley,' he complained, 'is not doing me right. His conduct, I believe, savors a little of injustice. I am a true Republican and have been tried already in the hottest part of the anti-slavery fight, and yet I find him taking up Douglas, a veritable dodger,—once a tool of the South, *now its enemy*,—and pushing him to the front. He forgets that when he does that he pulls me down at the same time. I fear Greeley's attitude will damage me with Sumner, Seward, Wilson, Phillips, and other friends in the East.' This was said with so much of mingled sadness and earnestness that I was deeply impressed."

As a result Herndon went to Washington to see about it. We quote part of what he reported:‡

"In Washington I saw also Seward, Wilson, and others of equal prominence. Douglas was confined to his house by illness, but on receiving my card he directed me to be shown up to his

* Lamon's *Life of Lincoln*, page 341.

† Herndon's *Life of Lincoln*, page 390.

‡ *Ibid*, pages 392-4.

room. We had a pleasant and interesting interview. Of course the conversation soon turned on Lincoln. In answer to an inquiry regarding the latter I remarked that Lincoln was pursuing the even tenor of his way. 'He is not in anybody's way,' I contended, 'not even in yours, Judge Douglas.' He was sitting up in a chair smoking a cigar. Between puffs he responded that neither was he in the way of Lincoln or anyone else, and did not intend to invite conflict. He conceived that he had achieved what he had set out to do, and hence did not feel that his course need put him in opposition to Mr. Lincoln or his party. 'Give Mr. Lincoln my regards,' he said, rather warmly, 'when you return, and tell him I have crossed the river and burned my boat.' '*

Again quoting Lamont:†

"During the winter of 1858, Mr. Douglas held frequent consultations with the party leaders of the Republican Party. Their meetings were secret, and for that reason the more significant. By this means, harmony of action was secured for the present, and something provided for the future. Mr. Douglas covertly announced himself as a convert to the Republicans, declared his uncompromising enmity to the 'slave power,' and said that however he might be then, he *would be seen fighting their battles in 1860*;‡ but for the time he thought it wise to conceal his ultimate intentions. He could manage the Democracy more effectually by remaining with them until better opportunities should occur. He insisted that he would never be driven from his party, but would remain in it until he exposed the administration and the *Disunionists*; and that when he went out he would go of his own accord. He was in the habit of remarking that it was policy for him to remain in the party, in order to hold certain of the rank and file so that if he went over from the Democracy to any other party, he would be able to take the whole crowd along with him; and that when he got them all over, he would cut down the bridges and sink all the boats."§

* Post, 128.

† Lamont's Life of Lincoln, page 389.

‡ Post, 128.

§ Post, 128-132.

When the time came we will see that Douglas not only carried his men across but shoved Mr. Lincoln's scow over ahead of him. No one north of Mason and Dixon's line in 1861 would fight for Lincoln's and Seward's Thirteenth Amendment with slavery.

In the open Senate, Senator Chandler announced to the Southern brothers the new deal. He went behind the Kansas-Nebraska Bill. It had made Kansas a Free State and as such it would be admitted. "Never as a Slave State can you bring it into the Union. There is not power enough in the Government of the United States to do this." Disclaiming any intention of defeating Senator Davis' bill to increase the regular army of the United States,—there were then 2,500 Federal troops in Kansas and these had been used to help the Lecomptonites,—he said:

"The Government of the United States has not bayonets enough, nor money enough to pay for sufficient bayonets, to force a constitution on the necks of any people. It cannot be done. There is no constitutional right to attempt to do it. . . . Let one drop of blood flow in Kansas or anywhere else, and James Buchanan, President of the United States, will be liable to impeachment, and to be hanged for murder also. . . . If you adopt the Lecompton Constitution to-morrow, you cannot enforce it. Blood will flow if you attempt to enforce it, but it cannot be enforced."

Then he told the Kansas people he would disown them if they should fail to resist any attempt to force a constitution upon them.

"The race of Union-Whiners, the old women of the North, who have been in the habit of crying out, 'The Union is in danger!' have passed off the stage. . . . In their places are men who love this glorious Union, . . . *who will fight for this Union to the death.*"

The Lecompton Bill passed the Senate on the 23d of March, 1858, Douglas and only two other Democrats voting against

it, but in the House the Douglas men were able to amend it with what was called the English Bill, on April 20, so as to require a vote on it by the people of Kansas on August 2. In all Douglas was able to command thirty Democratic votes in the House against the bill without a referendum. Of this thirty, five were Democrats from Illinois. It was then beaten in Kansas by a vote of 17,000 to 5,000.

Then "Zach" Chandler paraphrased "Jim" Buchanan,— "Kansas is as free a State as Michigan and as such will be admitted." And then the men of force went behind Douglas' Pacific Railroad Bill,* and "Ben" Wade began pressing anew its complement, the "Homestead Bill," which granted to every actual settler on the public domain 160 acres of land. This bill, if passed, assured to freedom several if not all the new States to be carved out of the public domain, and it bid fair to make good Webster's prediction as to the territory of New Mexico becoming a Free State. The scepter had passed from the statesmen to the practical men.

Meanwhile Douglas offered to give up the senatorship if the Republicans would let the Democratic Congressman in Illinois who had defeated Buchanan's Lecompton Constitution be re-elected in November, 1858. Two of the Illinois Congressmen, Cook and Harris, had made as good speeches as the annals of Congress reveal against the English Bill without a referendum. Mr. Lincoln and his followers said Douglas' motives were ignoble and they would have nothing to do with him and his associates, and besides, he might become President. Herndon says:†

"Lincoln's greatest fear was that Douglas might be taken up by the Republicans. Senator Seward, when I met him in Washington, assured me there was no danger of it, insisting that neither the Republicans nor any one else could place any reliance on a man so slippery as Douglas."

* Ante, 64. Post, 132, note, 174.

† Herndon's *Life of Lincoln*, page 394.

Lincoln lost the election for Senator in November, 1858, because he lost Abolitionist votes in Northern Illinois. He backed away from the "House Divided Against Itself" speech when Douglas charged it was Abolitionism pure and simple. Douglas stayed by "Squatter Sovereignty," no matter, he told Lincoln, what the Supreme Court might decide. And so he earned this from Lincoln in the Freeport debate: "Douglas is the best Abolitionist of them all." Douglas, in the debates, vindicated in the eyes of the Abolitionists the principles of the Kansas-Nebraska Bill.

The assumption seems to be that Mr. Lincoln got the better of Douglas in the Lincoln-Douglas debates because he became President. But as President he could not hold the South although he promised them slavery* by a Thirteenth Amendment and thus he never attained to the supreme power. As he hesitated on the 4th of March, 1861, so he doubted and hesitated all during the war. But never Chandler and Wade. While Mr. Lincoln was praying for Divine guidance, Chandler and Wade were invoking the god of war. It was Chandler who forced McClellan's removal. McClellan himself writes that on October 26, 1861, at Secretary Stanton's house, he put Chandler and Wade after General Scott. They were complaining of McClellan's slowness in action. McClellan said Scott was to blame. "We will retire Scott," said Chandler, and they did. Then they gave McClellan 250,000 men, and as he "stalled" before Davis' "bluff," Chandler said, "McClellan, it's your time to go."

To drive the Generals on, Chandler introduced a bill to abolish West Point. Most assuredly he was for experts in all lines of government, but when the expert could not stand a cross-examination, Chandler did what the executive man always should do, set aside the man of a little book learning. All of the biographers and the historians say that Chandler's and Wade's ignorance cost the government millions of dollars and

* Post, 107.

thousands of lives, and that they did much injustice to many educated military men. This only shows the ignorance of the biographer and the historian. Executive capacity is superior to all the technical knowledge of the race. It is at the basis of waging war successfully. Most of the Union generals whom Chandler and Wade forced in got whipped, but all this developed Grant.

The historians write down Benjamin F. Wade as "uncouth." They justify the failure of the impeachment proceedings against Andrew Johnson, for this prevented Wade becoming President. But he was not nearly so bitter and resentful towards the former rebels as he was against President Johnson.

"Ben" Wade had suffered no humiliations at the hands of the Southern Aristocracy. On the contrary, before Chandler came, he alone, as we have shown, had backed down all their leaders.

One of the well-authenticated stories of the time is that, just after Lincoln was assassinated, Senator Wade called on President Johnson for the sole purpose of advising him against his avowed purpose of adopting Strafford's plan of the "thorough." Wade wanted no "Bloody Assizes" throughout the South, but he was jocular about executing all the leaders and rich men. "A dozen will be enough. I could even make it thirteen, a baker's dozen." Finally he said: "I think it will do to drive a half-dozen, Jeff Davis, Benjamin, Slidell, Mason and Howell Cobb, out of the country." "The interview was long," says Mr. Blaine, "and at its close Mr. Johnson expressed surprise that Wade was willing to let 'the traitors,' as he had always styled them, escape so easily."

What Senator Wade was chiefly concerned with was to change the organic and statutory law, as it was also the palpable duty of all ex-Confederates to provide against another rebellion, and safeguard the natural inherent rights of the freemen. "They abandoned their places; and now with assurances almost equal to that with which they left, they come back and demand

a restoration to their seats in Congress. Neither they nor the President (Lincoln) can grant them this or the conditions on which they can return.”*

That Wade turned with too much malignity on President Johnson, after he had listened to the seduction and flattery of his former Southern opponents, is true. But it is also conclusive that he would not have yielded his political and constitutional views to Mr. Lincoln. It is also fortunate that the impeachment proceedings failed by a narrow margin. But to conclude that Benjamin F. Wade was without the legal qualifications and magnanimity necessary to qualify him for the presidency of the United States, is wrong.

However this may be, although without college education, Senator Wade's legal attainments were of the highest. He was one of the best examples of the transformation wrought in the New England type by a few years of his young adolescence passed in the West as it then was. He had had wide experience at the Bar and on the Bench in Northeastern Ohio before he was elected to the Senate. He developed one of his law students, Rufus P. Ranney, into the best jurist Ohio ever produced. “He struck the most effective single blow ever dealt a man, a cause or an argument, in the history of Congress,” when he interrupted Senator George E. Bigler of North Carolina, who was pleading that he might take his colored mammy—the woman who had nourished him in infancy, and whom he loved as a real mother—with him to Kansas. “We are willing you should take the dear old lady there but we are afraid you will sell her when you get her there.”

In closing the debate on the Homestead Bill, Wade demonstrated his equal of the best the annals of Congress afford. After Senator Seward had retired from the Senate Chamber, because of the virulence of the personal attacks on him for opposing the bill of Senator Slidell to appropriate \$30,000,000 for the purchase of Cuba, Senator Wade took the floor and

* Post, 187.

with the slogan for the Homestead Bill, "Lands for the Landless," and "Niggers for the Niggerless," and furnished invective enough for a half-dozen challenges. None came. Instead, the Senator from Louisiana withdrew the Cuban Bill. But after Wade had told them to quit talking about seceding, he said, "Go to it now if you have any hope of success, for every day you postpone it you insure its failure. Don't wait until we get into control of the National Government."

No Northern Democrat dared, after Wade's argument and philippic, to vote against the Homestead Bill. And one of the wisest and farthest-reaching measures then and there, January, 1859, passed the Senate, assuring statehood to Kansas and to several other territories.

CHAPTER VI

THE "CONSPIRACY" OF DOUGLAS AND CHANDLER AND WADE AGAINST JEFFERSON DAVIS

DEBATE BETWEEN DOUGLAS AND DAVIS IN THE SENATE—SENATOR WADE INTRODUCES TERRITORIAL BILLS FOR COLORADO, DAKOTA AND NEVADA—ELECTION OF 1860—ZACHARIAH CHANDLER AND EDWIN M. STANTON—STANTON SIDES WITH BUCHANAN AGAINST DOUGLAS—BUCHANAN'S DEFENSE OF HIS FAILURE TO STOP SECESSION—CONSTITUTIONAL LIMITATIONS ON THE PRESIDENT'S POWERS—BOTH BUCHANAN AND LINCOLN RELUCTANT TO INITIATE THE WAR—DAVIS ATTACKS BUCHANAN'S POLICY OF COERCION IN THE SENATE.

AFTER the Douglas-Davis split at Charleston in May, 1860, over "Squatter Sovereignty," Jefferson Davis says he was authorized by the pro-slavery men to make an adjustment with Douglas but found the latter implacable.

Before these overtures, and while the Republican party was nominating Lincoln, Senators Davis and Douglas had a great debate in the Senate—one of the greatest in its history, but hardly mentioned in any of the histories,—in which Douglas vindicated, as the corner-stone of the Republic, the right of each State and community to regulate its own domestic affairs. He denounced secession as treason and warned them that treason meant war. He was the first statesman to publicly use the word war as the solution of the difference. He repeated these words from the stump in Mississippi, Georgia and Virginia.

Senator Douglas came back to Congress in December, 1860,

more bitter than ever against his former political associate. The old "conspiracy" between him and the men of force manifested itself in a way the historian does not or cannot explain.

Early in that December session, at a time when Mr. Lincoln and Senator Seward were breaking ground,* Senator Wade came out in the open behind Douglas and handed it to South Carolina. He introduced bills in the Senate for the organization of the territories of Colorado, Dakota and Nevada, copied verbatim from the Kansas-Nebraska Bill. Contemporaneous therewith, Wilmot of Proviso fame, as Chairman of the Committee on Territories, started these bills through the House. This act of Mr. Wilmot's, his biographer suppresses. After Wade became Chairman of the Territorial Committee, he introduced and passed bills for the organization of the territories of Idaho and Montana on the Kansas-Nebraska model.†

Soon after South Carolina seceded, Vice-President Breckenridge left the chair to contend that the South was not getting an even break in the territories. The "Men of Iron" let Douglas do the talking and he not only silenced the Vice-President, his late pro-slavery opponent, but Jefferson Davis, Benjamin, Mason and Toombs, without a dissent heard themselves denounced as "traitors."

"The South has no ground whatever for complaint and whatever there is of danger to your slave system is the result of your own deliberate planning and preparation. Except the election of Mr. Lincoln by a plurality of your own making, not an act nor a line of legislation is in force or now proposed, that has in the least changed the nature or condition of your 'Slave Labor System.'"

Then he referred to Wade's bill for the organization of Colorado, Dakota and Nevada, and Seward's proposed Thirteenth Amendment with slavery, which had passed the House over Thaddeus Stevens' bitter protest and was an utter repudiation of the Chicago platform of the Republican party.

* Post, 103-9.

† Ante, 58-82. Post, 132, note.

"This being the situation and having a Republican House of Representatives at the other end of the Capitol for two years, there never was a time in the history of the Republic when there was less restriction upon the institution of slavery or less difficulty in the way of its extension into the Territories, with this condition only, that in full conformity to our institutions, slavery could only remain in a State or Territory after its organization, by the consent of the majority of its legal voters, honestly expressed and declared.

"It discloses the truth that some of you conspirators against your country have undertaken the ruin and overthrow of Democracy in the establishment of a purely slaveholding nationality, and that you vainly expect to escape the treasonable consequences of your plunge into the dark, in what you imagine to be a peaceable separation and dissolution of the Union, which, in the light of all history, can have no other than a woeful ending. When such a complaint is forced upon us, then there will be and can be only two parties; one will be for our country, and the other against it."

Then, being duly authorized by the "Men of Iron," Senator Douglas served notice on Vice-President Breckenridge,—and before Jefferson Davis made his valedictory,—that if Breckenridge did not agree as Vice-President at the appointed Constitutional time, February 5, 1861, to count the electoral votes, a resolution would be passed directing the Sergeant-at-Arms to put him out of the chair.* Breckenridge counted the votes and as Vice-President declared Lincoln and Hamlin duly elected President and Vice-President of the United States, and meantime President Buchanan came out for the Union.

If Mr. Lincoln had put himself in the hands of Wade and Chandler, steered by "The Lawyer for the Union," instead of taking Seward's advice, he would have gone through Baltimore in daylight. It surely was in the power of the Government of the United States, with its Army, to have given its duly constitutionally declared and elected President a safe

* Life of Lincoln, Robert H. Browne, Vol. II, p. 548.

conduct through the streets of Baltimore, "Anything in the constitution or law of any State to the contrary notwithstanding."* Moreover, Chandler, as we shall show, had his hooks in Stanton, Buchanan's Attorney-General, who did not hesitate to threaten Buchanan with impeachment if he did not go along. "Then and there," James Buchanan was a different man than he was before he had his quarrel with Floyd. "Why," Douglas said, "we would have made Jeff Davis himself count that vote, if it had been necessary." When it came to a legal proposition Douglas went around Davis like a cooper around a barrel. While Mr. Lincoln, New York and New England were breaking ground, Douglas was boring in and denouncing every act looking to secession as treasonable. The possibility of an indictment, drawn by Stanton in the District of Columbia, hastened Davis' departure.†

Mr. Blaine, in writing of the legislation as to Colorado, Dakota and Nevada, says:

"Between the words of Mr. Seward and Mr. Sumner in the one crisis (1854), and their votes in the other (1861), there is a discrepancy of which it would have been well to leave on record an adequate explanation.

"It will, therefore, always remain one of the singular contradictions of the political history of the country, that, after seven years of almost exclusive agitation on this one question, the Republicans, the first time they had the power as a distinctly political organization to enforce the cardinal doctrine of their political creed, quietly and unanimously abandoned it. And they abandoned it without a word of explanation."

The explanation is the "conspiracy"‡ of Chandler and Wade and the Douglas men, and especially the force and personality of Zachariah Chandler. The evidence at hand is conclusive as to this.

Politics makes strange bed-fellows. As to when Chandler's

* Article 6, Section 2 of the Constitution of the United States.

† The Rise and Fall of the Confederacy, Jefferson Davis, Post, 92.

‡ Ante, 82.

relations with Edwin M. Stanton began, there is no record. It was before December, 1860. But from that time until Stanton's death Chandler was Stanton's friend. And it was Chandler who started the movement to put Stanton, then broken in health, on the Supreme Bench. Stanton died a few days after his confirmation, and Chandler raised a fund for \$140,000 for his widow and children,—starting it with his own subscription of \$10,000.

Not a lawyer himself, Chandler early in his business and political career sought the counsel and advice of lawyers. As a business man, he sometimes astounded the legal fraternity at the use to which he put or proposed to put the advice his lawyer gave him, but he often had an ulterior design which he did not reveal. Chandler had been impressed with Wade's advice to Toombs, "Secede now while you have the executive power. You won't have a look-in after we lay our hands on it." Relations with Buchanan's lawyer, without awaiting the slow process of political changes, was a means to Wade's end that Wade had not contemplated.

Many a lawyer comes to support a man or a cause because he has accepted a retainer. As we have shown, he is often unconsciously influenced by his client's interests.

The lawyer sometimes reacts forcefully on the client, as Stanton afterwards did on James Buchanan and on Abraham Lincoln. Simply as a lawyer he was the superior of either. February 11, 1858, Stanton, at the instance of Attorney-General Black of Buchanan's Cabinet, was retained to prosecute the "California Land Frauds." This employment brought him into contact with men in the Senate. He drew and sent in bills for Congress to pass while he was preparing for trial after he reached San Francisco, and these bills* were back in California in sixty days as laws of the United States and the laws that won the cases in court. The prohibition in the Con-

* Now Sections 2229, 2471, 2472, 2473, 5411 and 5412, of the Revised Statutes of the United States.

stitution against *ex post facto* laws did not seem to apply. Before the end of the year Stanton was back in Washington.

That Stanton was not of the corporation money-making type of "business" lawyer of today is evidenced by the condition in which he left his estate. In the California cases, he recovered lands for the government then estimated as well worth \$150,000,000 and a silver mine that yielded \$1,000,000 more while the litigation was going on and another year \$8,000,000, and he put in a bill for what the modern lawyer would say was the absurd sum of \$25,000, which included an itemized bill for expenses.

In studying the secession question, Chandler had discovered that some of the acts that Webster had drawn to enable Jackson to put down nullification had expired by limitation. Why this legislation was provisional is not explained even by the compromise on the tariff that followed. Chandler had the Jacksonian idea, justified by Webster's speeches, that at least some of the constitutional powers of the government of the United States were self-executing, and here is where Chandler first consulted Stanton the Jacksonian lawyer.

Aside from being a Jackson Democrat, it was known that Stanton had denounced the arrogance of the slave power and the subserviency of the Democrats and Whigs of the North. This was enough for Chandler and he "went after him." In 1854, when Chandler helped break up the Whig party, he selected a Jackson Democrat, Kinsley S. Bingham, as the first Republican candidate for Governor of Michigan. After Van Buren's defeat in 1844, Stanton was "off the reservation," taking no part in the war of factions. Although he was in Washington in 1852, he did not even go to the Baltimore Democratic Convention that nominated Franklin Pierce for President. Stanton did not vote for Buchanan in 1856, and in the Fall of that year, he moved from Steubenville, Ohio, to Washington.

Between Buchanan and Douglas, Stanton sided with

Buchanan, but not until he was in the pay of Buchanan's administration. It is wonderful what an influence a good round retainer has on a lawyer's political views. And how cheap some of them sell themselves.

December 20, 1860, Edwin M. Stanton was called to become Attorney-General of the United States, to take the place of Jeremiah Black, who had been transferred from the Department of Justice to the State Department when General Cass resigned because of President Buchanan's pacific message on Secession, sent to Congress December 9.

Some critics of Chandler say Stanton wrote many of Chandler's speeches. This ought to be conclusive that they were good ones. Chandler's preacher, Dr. Arthur T. Pierson, of Fourth Presbyterian Church of Detroit, was not the ordinary type of churchman. He recognized that there might be great virtues along with some of the smaller weaknesses of the flesh. His conclusion is supported by overwhelming evidence that no man wrote "Zach" Chandler's speeches. The churchman rightly says that the Chandler speeches were not the conventional cut-and-dried effusions of the ordinary public man, but that they came fiery hot, as the convictions of a man in action after long study of books, the Bible, the laws and the opinions of men of all kinds and classes.

"One of the essentials of the making of a good lawyer is a good client." If so, Stanton was fortunate in having Zachariah Chandler as a client. He was certainly a different one from James Buchanan or Abraham Lincoln. Jackson had threatened to hang Calhoun. Jefferson Davis himself writes that there was a movement on foot to arrest him and not let him leave Washington after his valedictory. Chandler's idea was to nip treason at the top, but Stanton could not put that over with Buchanan. In dealing directly with Mr. Lincoln, sixty days later, Chandler could not prevail on him to arrest Senators Wigfall of Texas and Breckenridge of Kentucky, both of whom subsequently "went out."

But this Stanton and Chandler did do, they almost made a Jackson Democrat out of Buchanan. Buchanan, manifestly proud of the comparison, resents in his defense the inference that there was any row in the Cabinet due to Stanton's legal opinions and threats, but the preponderance of the evidence seems to be on Stanton's and Chandler's side. Be this as it may, from the day Stanton says he threatened Buchanan with impeachment, namely, December 29, 1860, if he let Secretary of War Floyd order Major Anderson out of Fort Sumter, President Buchanan took a different view of the powers of the Government of the United States under the Constitution than he held in his Message to Congress on the 9th of December, 1860, which had caused General Cass to resign. That Stanton was capable of making such a threat is attested by the fact that Stanton afterwards, with Chandler's aid and while a member of the cabinet, helped set the machinery in motion to impeach his chief, President Johnson, for vetoing the tenure of office law which Stanton had advised Buchanan to veto because Stanton said it was unconstitutional.

Mr. Buchanan argues in his defense, as he did in his message of December 3, 1860, that it was a want of power and means under the Constitution and the laws that prevented him from arresting the secessionist movement, coupled with the refusal of the Republicans, January 8, 1861, to give him the aid he wanted to put it down. All the Federal officers in South Carolina, including judges, marshals, and clerks, resigned as part of the secessionist movement. United States Judge McGrath, for the District of South Carolina, resigned and became the first Confederate States Federal Judge.

There is something in both of these claims of Mr. Buchanan. In what way the Acts of Congress in 1795 and 1807* were a limitation on the power of the President—the acts which Webster had fathered to enable Jackson to put down Nullification had expired,—shall be stated in Buchanan's own terms in his message of December 3, 1860:

* Now Section 5297 of the Revised Statutes of the United States.

“These, the two acts above named, authorize the President, after he shall have ascertained that the Marshal, with his *posse comitatus*, is unable to execute civil or criminal process in any particular case, to call forth the Militia and employ the Army and Navy to aid him in performing this service, having first, by proclamation, commanded the insurgents ‘to return peaceably to their respective abodes within a limited time.’ This duty cannot by any possibility be performed in a State where no judicial authority exists to issue process, and where there is no Marshal to execute it, and when, even if there were such an officer, the entire population would constitute one solid combination to resist him.

“The bare enumeration of these provisions proves how inadequate they are, without further legislation, to overcome a united opposition in a single state, not to speak of other states which may place themselves in a similar attitude. *Congress alone has power to decide whether the present laws can or cannot be amended so as to carry out more effectually the objects of the Constitution.*”

As we will show, neither Seward, New York, New England, nor even Lincoln were for enforcing the powers Congress then possessed under the Constitution,* and neither took the position afterwards advanced, viz., that the constitution was self executing.

On the 31st of December, President Buchanan wrote to the South Carolina Commissioners, “This—give up Fort Sumter—I cannot, and will not do.” This was his final interpretation of the provision of the Constitution that required the president to hold and conserve the property of the United States. Jefferson Davis agreed with him in this, and furthermore, told everybody that Fort Sumter was impregnable as against an attack. This was part of the peace plan and was one of Buchanan’s excuses for not reinforcing Fort Sumter.

The act which President Buchanan asked Congress to pass, in his Message of January 8, 1861, was passed as a war measure July 29, 1861, and signed by President Lincoln. It authorized the President of the United States to call out the militia of a State, even against the wishes of the governor and

* Post, 103.

legislature of that State, to enforce the laws of the United States and suppress insurrections.*

Until Sumter was actually fired on, Buchanan further claims in his defense, President Lincoln followed the same line that he had adapted, of not initiating the war.† Indeed, Lincoln went further—for, says Buchanan, aside from offering to withdraw from Fort Sumter, Lincoln's proposed Thirteenth Amendment actually encouraged the slaveholders. The secessionists pointed to the Thirteenth Amendment as to what they would get if they would "co-operate."

Buchanan also says in his defense that he privately told the secessionist leaders that whatever may have been the constitutional limitations, a single shot at Sumter would make for a united North. Had Congress given him, in January, 1861, the power they later gave President Lincoln, namely, in July of that year,‡ Buchanan claims he might have suppressed the insurrection before Lincoln's inauguration. Certainly this act would have been of great aid to President Lincoln in March, 1861, when he was giving ground instead of boring in. President Buchanan brought enough troops to Washington, against the protests of his former associates, to insure a quiet and peaceable inauguration of his successor, and on that same day, Major Anderson first reported that he would need additional troops to hold Fort Sumter, namely, 18,000 to 20,000 men.

That Jefferson Davis held back the South Carolinians from firing on Sumter, there can be no doubt. He made a trip from Montgomery to Charleston for this purpose alone. He held them back after the Provisional Confederacy was organized, and, as a matter of fact, he did not himself order the shot fired that finally made an adjustment impossible. It was weakness on his part to permit that shot to be fired.

Against President Buchanan's policy of coercion, Senator Davis spoke on January 10, 1861:

* Now Section 5298 of the Revised Statutes of the United States.

† Post, 126.

‡ Section 5298, Revised Statutes of the United States.

"Are we, in this age of civilization and political progress, when political philosophy has advanced to the point which renders it possible that the millennium should now be seen by prophetic eyes—are we now to roll back the whole current of human thought, and again return to the mere brute force which prevails between beasts of prey, as the only method of settling questions between men? . . .

"Allow an officer of the Army to make war? Allow an unconfirmed head of the Department to make war? Allow a President to make war? No, sir.

"On the verge of war, distrust and passion increase the danger. Today it is in the power of two bad men, at the opposite ends of the telegraph line between Washington and Charleston, to precipitate the State of South Carolina and the United States into a conflict of arms without other cause to produce it.

"Senators, we are rapidly drifting into a position in which this is to become a government of the Army and the Navy, in which the authority of the United States is to be maintained, not by law, and not by constitutional agreement between the States, but by physical force; and will you stand still and see this policy consummated?"

Jefferson Davis is perhaps the most unfortunate public man America has produced. But there was always a trace of the sense of personal responsibility or the "chivalry" of the South in his otherwise admirable speeches. When he left the Senate to join the Confederacy, he was simply bluffing, and in the term so very common in the South, a fighting man believing in the duello, at least an avower of his personal responsibility, he should have been the last man to complain of the man who said, "We will make them quit bluffing and go to it." Still, we may pardon his resentment against this one man.*

* Post, 110. Ante, 93.

CHAPTER VII

SECESSION

THE COTTON STATES OPPOSE SECESSION—ALEXANDER H. STEPHENS TRIES TO KEEP GEORGIA IN THE UNION—SEWARD PROPOSES THE THIRTEENTH AMENDMENT—SUPPORTED BY LINCOLN—THE PRESIDENT-ELECT OFFERS CONCESSIONS TO THE SOUTH—“CO-OPERATION AND COMPROMISE”—LINCOLN REACHES WASHINGTON AND MEETS SEWARD—THE INAUGURAL ADDRESS REVISED AND SOFTENED—JEFFERSON DAVIS’ THEORY OF THE UNION—LEADERS OF THE “PEACE CONFERENCE” AT WASHINGTON MEET LINCOLN—DAVIS OPPOSED TO WAR.

THE political aspects of slavery were different from those of its economic side. The big slaveholders did not want a fight and were misled by the bluff or the promise, “co-operate and compromise”—that is, sell the negroes to the Government. An old darkey who had purchased his freedom came back to his former owner,—“Massa, dis nigger property’s mighty precarious. Ah wants my money back.”

James Suget, in 1860, one of the largest slave owners in Mississippi, once told me he voted for Union delegates to the Mississippi Convention and that had Alexander H. Stephens been elected President of the Confederacy, he, Stephens, would have accepted Lincoln’s offer of payment for the slaves, and the war would have ended in 1862.

In every Cotton State, except South Carolina, there were votes against secession. On the 28th of February, 1861, North Carolina, in a referendum, voted against secession. Tennessee did the same by a majority of 12,000 on the 9th of February,

although later, on May 6, she voted herself out by a total of 100,000 against 50,000.

In Georgia there was a big fight for the Union led by Stephens. "Squatter Sovereignty" or "Popular Sovereignty" in the territories was all that the South could or should ask for, urged Mr. Stephens. He had supported Stephen A. Douglas at the polls. It was the 19th of January, 1861, before they got Georgia out, and as State after State in the South followed suit, the Republican leaders, including Abraham Lincoln and William H. Seward, lost their nerve.

Says James G. Blaine,—one of the best historians of that time and also one of the participants in the events he narrates,—in his "Twenty Years in Congress":*

"The Republican leaders and masses, especially in the Middle and the New England States, became affrighted at the result of their work. From the towns, cities and villages petitions went into Congress to stop the controversy."

On behalf of the Republicans, Senator Seward took up the new compromise.† It was to be a Thirteenth Amendment to the Constitution, to make slavery express and irrevocable in the States where it existed. The resolution to submit it was violently opposed by Thaddeus Stevens, but it passed the House by a vote of 133 to 65. Presently we will show how Chandler disposed of it.

That Lincoln was in thorough accord with Senator Seward and his Thirteenth Amendment, the record is conclusive.‡

On the 17th of December, 1860, Lincoln wrote to Senator Trumbull protesting, but not strongly, about Wade's new Colorado, Dakota and Nevada territorial bills.§ Wade had put it up to the president-elect in a letter to Lincoln's friend, Senator Trumbull, one of the anti-Kansas-Nebraska senators, and the man Lincoln selected when he could not "make it" in 1855.

The South Carolina secession address came over the wires

* Volume 1, page 273.

† Ante, 93.

‡ Post, 104.

§ Ante, 92.

on the 20th. Directed especially at or to Abraham Lincoln in the South Carolina address was the following:

"Acting under the general welfare clause,* if African slavery in the Southern States be the evil their political combinations affirm it to be, the requisites of an inexorable logic must lead them to emancipation. If it is right to preclude or abolish slavery in a territory why should it be allowed to remain in the States?"

We have some of Lincoln's reactions under his own hand:

"Confidential

"Springfield, Ill., Dec. 21, 1860.

"HON. LYMAN TRUMBULL,—

"MY DEAR SIR:

"Thurlow Weed was with me nearly all day yesterday, and left last night with three short resolutions which I drew up, and which, or the substance of which, I think would do much good if introduced and unanimously supported by our friends. They do not touch the territorial question. Mr. Weed goes to Washington with them; and says he will first of all confer with you and Mr. Hamlin. I think it would be best for Mr. Seward to introduce them, and Mr. Weed will let him know that I think so. Show them to Mr. Hamlin, but beyond him do not let my name be known in the matter.

"Yours as ever,

"A. LINCOLN."†

The first of these three resolutions was to amend the constitution so as to prohibit Congress from ever interfering with slavery in any of the States where it existed by law.

Trumbull did not want to go along with the men of iron like Douglas, Chandler and Wade but was opposed to Seward's and Lincoln's Thirteenth Amendment with slavery, and finally had the honor of writing freedom into it. On January 16, 1861, he wrote to E. C. Larned,—a Chicago lawyer who on January 7, at a mass meeting in Chicago, had passed a series of resolutions denouncing concession to the South,—as follows:

* Ante, 9. † Ante, 93. Post, 103.

"To make or propose concessions to such a people, only displays the weakness of the government."

Alexander H. Stephens fell into line for "co-operation and compromise," for after the Confederacy was provisionally organized, February 4, 1861, he made a speech justifying slavery as a basis of our civilization. Certainly the Southern people were misled.

President-elect Lincoln reached Washington early on the morning of the 23rd of February, 1861, after an all-night ride* from Harrisburg by way of Philadelphia to avoid the mob which Senator Seward, Secretary of State-to-be, had advised him might assassinate him at Baltimore. Lincoln was joined by Seward at the Willard Hotel at breakfast, where he gave Seward a draft of his Inaugural Address, which he had prepared before he left Springfield, in part with the aid of his abolitionist law partner, Mr. Herndon. It had Mr. Herndon's approval as an anti-slavery state paper, as written and printed in Springfield. There is much in the histories and biographies† about the change in style and phraseology in this address and the softening of terms, as suggested by Mr. Seward.

"May Congress prohibit slavery in the territories?" was one of Lincoln's queries. The platform of the Republican party of 1860 had been peremptory and specific that Congress could and should exclude slavery from the territories. And in the original text of his address Lincoln had so written it.‡

Indeed, the Republican party had taken form in opposition to the proposition that the people of the territory of Kansas should determine whether they would have slavery or not, just as it was left to the respective States of the Union to determine. At first it was the anti-Kansas-Nebraska party. When formally organized, February, 1856, the Republican platform "denied the authority of Congress, or of a territorial legislature, or of

* Ante, 66. Post, 132, note.

† See Hay and Nicolay.

‡ Post, 112-13, 183.

any individuals, to give legal existence to slavery in any territory of the United States."

It was at Seward's request, Hay and Nicolay tell us, that Lincoln omitted all reference to the platform of the Republican party,—“to remove the prejudice and passion of the South and the fear and anxiety of the North.”

But it was for a very different reason that the fighting men of the Senate and House had abandoned the original fundamental principle of the Republican party and dispensed with the leadership of William H. Seward, as we shall presently show. It was all in keeping with the “conspiracy” they had entered into with Stephen A. Douglas in February, 1858.*

With all the improvement in literary style, Lincoln's Inaugural Address cannot be rated as strong a State paper as it was before it was submitted to Seward. The word “treasonable,” for instance, characterizing the ordinances of secession, was changed in the final draft to “revolutionary.”†

Better for all concerned would it have been had he adhered to his original text.‡

Possibly this change of words was out of consideration for the President of the “Provisional Government of the Confederate States of America.” The historian and the biographer are wont to be peremptory in drawing inferences.

That Jefferson Davis had a deep affection for the Union, utterance after utterance of his attests:

“It may be pardoned to me, Sir, who in my boyhood was given to the military service, and who have followed under tropical suns and over northern snows the flag of the Union, if I here express the deep sorrow which always overwhelms me when I think of taking a last leave of that object of early affection and proud association.”

Thus spoke United States Senator Jefferson Davis in the Senate of the United States, January 10, 1861. His theory, very briefly expounded day after day, was that the right of

* Ante, 82.

† Post, 114.

‡ Post, 107.

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the people to change their form of government was a legal right guaranteed to them by the Declaration of Independence, "reserved to the people of the States" by the tenth amendment to the Constitution of the United States, and that the ordinances of secession and action under them were the mere exercise of this revolutionary right. Therefore, the substitution by Mr. Lincoln of the word "revolutionary" for "treasonable" may have been the offer of a ladder by which the secessionists might descend to his next proposition, the Thirteenth Amendment guaranteeing slavery, which would make for a united Union.

There is nothing specific in the books about how Lincoln came to adopt the Thirteenth Amendment with slavery. It was not in the draft of his Inaugural Address when he left Springfield, and as submitted to Mr. Seward, but in his finished Inaugural he gave it his assent and said that, recognizing that the right to hold a slave was implied in the Constitution, he was willing that it should be made express and irrevocable. In view of what the Thirteenth Amendment finally did contain, certainly Abraham Lincoln's First Inaugural was a better State paper before it was edited by William H. Seward. The explanation perhaps lies in the view that Mr. Lincoln's opposition to slavery was political and not moral. His letter we have just quoted indicates this, while his letter to Horace Greeley,—that he was going to save this nation either with or without slavery,—bears out this theory. This is the view of Ward H. Lamont,* who made the night trip with the president-elect through Baltimore, and remained with him in Washington until his assassination, and became one of his biographers.

The Peace Conference of the States, called by Virginia and presided over by Ex-President Tyler and then sitting in Willard Hall adjoining the hotel, was thrown into great excitement by the news of Lincoln's arrival in Washington. At the instance of Mr. Tyler, a message was sent to Mr. Lincoln inquiring when they might call to pay their respects. The

* Ante, 67-71.

answer was, at nine o'clock that evening. Meanwhile with Senator Seward he called on President Buchanan at the White House and received a call at the hotel from the Illinois Congressional delegation headed by Senator Douglas and had a private conference with the "Little Giant." When Mr. Lincoln visited the United States Senate and the Southern men held off, the "Little Giant" again publicly showed his sympathy and good will to the president-elect.

While the historians and biographers are silent about this Willard Hall conference, the few accounts that exist show that the discussions were long and unrestrained. At its close, William C. Rivers, one of the Virginia delegates, a former Member of Congress and "a most cultured and polished gentleman," said: "Mr. Lincoln has been both misjudged and misunderstood by the Southern people. I do not see that much fault can be found with the views he has expressed this evening."

Both before and after his inauguration, Lincoln said he was willing to order Major Anderson to evacuate Fort Sumter. Jefferson Davis did not want the issue to go to war. The South, he declared, was not prepared for war. It was without factories and arsenals to produce the munitions of war. Doubtless, Secretary of War Floyd's intentions were the best in the world, but the 113,000 stands of arms he sent South in aid of the Rebellion, Jefferson Davis knew had been displaced by a better musket for the United States Army, as Floyd himself afterwards learned.

Educated in the National military school at West Point, serving with distinction in the Mexican War, later Secretary of War, and then—during the secession debates—Chairman of the Military Committee of the Senate, Jefferson Davis was, on the administrative side, one of the most capable men this country ever produced.

His farewell address in the Senate had been dignified. His inaugural address as President of the Provisional Confederate

States of America was not implacable. Indeed, it held out the hand of reconciliation. We have shown how Mr. Lincoln reacted.* Why, then, was there no settlement?

* Ante, 104. Post, 110.

CHAPTER VIII

SENATOR CHANDLER'S "BLOODY LETTER"

CHANDLER'S CAREER AND PERSONAL CHARACTERISTICS—POLITICAL LEADER IN MICHIGAN—GOES IN TO BREAK UP THE WHIG PARTY—ADVISES LINCOLN AGAINST COMPROMISE—OPPOSES SEWARD AS A MEMBER OF THE CABINET—CHANDLER'S "BLOODY LETTER" READ IN THE SENATE—CHANDLER'S SPEECH IN THE SENATE IN DEFENSE OF THE LETTER.

IN his "Rise and Fall of the Confederacy,"* Jefferson Davis lays all the blame for the war and its direful consequences on Senator Zachariah Chandler of Michigan and his "Bloody Letter." A paradoxical statement of this kind by the most capable of judges may none the less require more than the conventional consideration of the character and deeds of "Zach" Chandler. Some of his former acts, as we have detailed them, tend to establish the fact that he was capable of doing all that is charged against him by his most implacable enemy.†

Zachariah Chandler was a type peculiar among statesmen. Some of the historians rate him not unlike Senators Douglas and Wade in his origin and in many of his characteristics. His personal habits were those of Douglas. Educated in the common schools of New Hampshire and transplanted as a youth to Michigan, Chandler early made a fortune in commercial pursuits, but he never was afraid of a panic. His money did not rule him, but he was for "sound" money. One of the ways Wall Street or the "business interests" have of

* Volume I, page 249. Ante, 113.

† Ante, 79.

stopping political agitation at Washington is to stir up a "panic." This is what Howell Cobb had been doing. Chandler denounced the timidity of the New York interests and said: "Let a panic come, I can lose a hundred thousand dollars." When it came to public money he was of the strictest integrity. A good fighting man—he had many personal encounters,—after a night session he would guard Simon Cameron to the latter's lodgings for fear of assaults by some of the thugs the Southern Senator's intemperate language might move to action. But he was a party to forcing Cameron out of Lincoln's Cabinet, because, as Secretary of War, Cameron was too close to the "profiteers."

Like Douglas, Chandler's taste for whiskey, as well as the violence of his language, offended the church people. "Between d—d rascals, which is *our* d—d rascal?" He spent money in politics, and actually, it was said, carried the Michigan branch of the Republican Party around in his breeches pockets. According to Gideon Wells, "his instincts were low and debasing."

Assuming all this to be true, what James G. Blaine records of "Zach" Chandler is undoubtedly also true:

"He was a natural leader. He had unbounded confidence in himself, possessed moral courage of a high order and did not know the sensation of physical fear. . . . He distinguished between a friend and an enemy, and he seldom neglected an opportunity to cripple the latter."

Originally a Whig, after he had made his fortune and had served as Mayor of Detroit,—which position developed the executive side of his character,—Chandler was defeated as the Whig candidate for Governor of Michigan. Then he went in to break up the Whig Party.

July 6, 1854, at Jackson, Michigan, Chandler was a leader in organizing a new party in opposition to the Kansas-Nebraska Bill, but it had no name, and in nominating a former Democrat for governor, K. S. Bingham (who had also been nomi-

nated for governor on the 22nd of February preceding), as a Free-Soil Democrat, he was the practical man playing politics.

Zachariah Chandler was also one of the early callers on Mr. Lincoln on the morning of his arrival at the Willard Hotel. He renewed his advice of the 17th of November preceding:

"From the days of Carthage to those of James Buchanan the great mercantile centers have been peaceable—ever ready to hire defenders, not furnish them, ever ready to buy immunity but not fight for it. . . . A panic can be gotten up to order at any time by these gentry. Witness the United States Bank panic upon General Jackson and the disunion monetary panic to defeat you. . . . We shall be better off six months or a year hence by settling this question of secession and panic now and forever. This is a government to be sustained or a thing to be destroyed. If it is a government let us stand by it and sustain it; if it is a thing without the power of self-protection *let it perish*, and the sooner the better. Let us have a regular General Jackson administration and no compromise."

Following Chandler's advice, it is said that Lincoln abandoned his purpose of offering places in the Cabinet to Alexander H. Stephens of Georgia and James Guthrie of Kentucky. Instead, Montgomery Blair of Maryland and Edward Bates of Missouri were selected. From first to last, Chandler was opposed to Seward's going into the Cabinet.* He had first-hand information from Stanton about Seward's dealings with the South Carolina commissioner, and he used it mercilessly in the homes, the cloak rooms, on the streets, and in the hotel lobbies and bars, in denouncing the "secessionists, Floyd and Seward," for proposing to give up Fort Sumter.†

William Pitt Fessenden, the Senator from Maine, says he became disgusted with Seward's peace plans and listened to the less gifted but more forcible and practical men of the Northwest, and hence voted for the Colorado, Dakota and Nevada Bills, which were passed through the Senate after the

* Ante, 79.

† Post, 115.

27th of February, the day the "Bloody Letter" was first read in the Senate.

So fierce was the opposition of the "men of force" to Seward's becoming Secretary of State that he got "cold feet" and, on the 2nd of March, asked Mr. Lincoln to release him from his acceptance of that office.

Lincoln's final words were, that he could not afford to let Seward take the first trick in the game,—that is, stay outside the administration and win on a "pacifist" platform and put through the Thirteenth Amendment with slavery. It was no game with Zachariah Chandler, and when Lincoln got behind Seward, Chandler went against Lincoln. Seward was in close touch with the Secessionists to the last. Chandler knew what Lincoln's Inaugural Address would be. When it came to 1862, John Hay is authority for the statement that Senator Chandler again warned Lincoln not to give the North another Seward message, and that Lincoln so far relaxed his dignity as to assure Chandler that he would not, and he did not.

On the 27th day of February, 1861, Senator Dixon of Kentucky read to the Senate a letter that Senator Chandler and his Michigan colleague had written to the Governor of Michigan on the 11th of that month, as follows:

"I telegraphed you on Saturday, at the request of Massachusetts and New York, to send delegates to the Peace Compromise Congress. Ohio, Indiana and Rhode Island are caving in, and there is danger of Illinois. The whole thing was gotten up against my judgment and advice. I hope you will send stiff-backed men who will not compromise, or none. Some of the Manufacturing States think a fight would be awful. Without a little blood-letting, this Union will not, in my estimation, be worth a rush."

The Congressional record has it that it was on the 2nd of March, 1861, that Senator Zachariah Chandler delivered his "Bloody Letter" speech.* But in reality it was delivered, after an all-night session, on Sunday, the 3rd, and while the church

* See Congressional Globe, 1860-1861, Part 2, page 1370.

bells were ringing. They wanted to show by the record, at least, that there was no desecration of the Sabbath.*

To quote the record:

Senator Chandler: "The people of the United States have a right to know what is to be the effect of the passage of this or any other measure of compromise—the Thirteenth Amendment with slavery. The junior senator from Kentucky the other day took exceptions to a letter, which he presented, which purported to have been written by me.

"I want to know of my friend of Kentucky [Senator Powell—afterwards Chandler called Powell a traitor], if we adopt the compromise proposed, will he be for enforcing the laws of the United States in all the thirty-four States?"

Senator Powell: "All laws, except those as to coercion,—I hold we have no right to make war on the seceded States, I do not concur with the Senator in the expression of his letter."

Chandler: "I adopt it."

Powell: "I believe those who advocate coercion are the worst enemies of the Union. Inaugurate it and you will at once unite every Southern State against those who attempt it."

Chandler: "That is just what I expect, it is just what I want the North to know.

"I ask that the people of the North, that the people of this great Union, will notice that acknowledgment of the gentleman. He, and the men who co-operate with him, are against the perpetuation of the Union. After we have abased ourselves, after we have evidenced our humility on our knees and begged them, for God's sake, to save the Union, what are we to gain? Nothing. For them we are told that the Union is finally and forever dissolved; and when we ask him what he will do with those traitors who have stolen our forts, . . . who have stolen our mints,

* Chandler was a good Presbyterian on the Cromwellian order. Logic was the basis of his government. This is a theory, at least, in the American System. According to Macauley the English or Anglican plan is, that all government is a compromise. "Four-fifths of the Episcopalians and all the Roman Catholics are opposed to me," said Chandler.

In the memorial services on the 27th of November, 1879, in the Fourth Presbyterian Church of Detroit, Doctor Pierson, Chandler's preacher, said: "It has been well said that religion demands a faith, a polity, and a party, and no man can be a patriot without a political faith and polity and party; though he stands alone he represents all these."

whose generals in our army have disgraced themselves and placed themselves beneath Benedict Arnold, he urges us to send commissioners to treat with them. May God forgive me if I ever consent to any such proposition.

"To treat with the six seceding States would disgrace us, your naval officers would be insulted by the Algerians, your bonds would not be worth the paper on which they are written today.

"If the right is conceded to any State to secede from this Union with the consent of the other States, I am for immediate dissolution. I will resign this seat and leave this Government and go live with the Comanches rather than live under a government that has not the power to enforce its laws.

"But, Sir, this Union is to stand; it will stand when your great-grandchildren and mine shall have grown gray—aye, when they shall have gone to their last account, and their great-grandchildren shall have grown gray. But the traitors who are today plotting against this Union are to die."

Then Chandler went to "hitting up" Kentucky on the Douglas lines, copying Douglas' speech of the May before. There were 25,000 Douglas fighting men in Kentucky, and the majority of the others—the Bell and Everett, or the Union, ticket had beaten the Breckenridge ticket in Kentucky—were looking to see where South Carolina would land before they urged Kentucky to jump out of the Union.

"Do you wish to have Canada right down upon your borders, and every man on the North bank of the Ohio River an Abolitionist? If so, join South Carolina. We in Michigan are grateful to Kentucky for coming to our aid in the war of 1812, and now we will stay by her if she will stay with us.

"When James Buchanan four years ago took possession of this government your treasury was full. How stands it now?

"Your treasury is not only bankrupt, but your credit is destroyed. The very men who are preaching secession and disunion have been robbing you throughout the length and breadth of this land. The President set the example. He bought right here in the capital ten newspapers—the 'Constitution,' he named it—and paid for it out of the produce of a theft from the National

Treasury. Your Secretary of War, proud son of Virginia—she has reason to be proud of such a son, a defaulter and an embezzler. . . . I could open here now a page of corruption that no government has ever exhibited since the world was found; and yet, the crowning act of his infamy was to issue untold millions of your bonds, and endorse them in his official capacity, and now to cover the evidences of his infamous crimes and his infamous treason, he is preaching disunion throughout the state of Virginia. He did but follow in the footsteps of your President.”

After showing up the corruption in the Post Office, Interior and Navy Departments, Chandler drove this wedge into the proposed compromise:

“After all this, what could you expect other than that men thus educated . . . shall seize your forts and custom houses, rob your mints, and break up the government if they can?

“They are traitors in thought, in heart and in act; and, as I said before, they are precisely in the position of the burglar who, having robbed your home and murdered its inmates, proposes to apply the torch to cover up the evidences of his crime.”

Declaring that he could show up the corruption in the Treasury Department if he had time, he replied to the interruption that Secretary of War Floyd would come back and confound his accusers and hold somebody personally responsible,—“Never!* When the good honest people, even in the Cotton States, learn of the corruption† and incapacity, as they will, they will repudiate the secessionist.”

Senator Chandler then said, “I had high authority for that letter [the ‘Bloody Letter’], authority that no Virginian will question, Thomas Jefferson,” and forthwith quoted from a letter from Jefferson to Colonel Smith, dated Paris, November 13, 1787:

“What country before ever existed a century and a half without a rebellion? And what country can preserve its liberties, if its rulers are not warned from time to time that its people preserve

* Post, 163.

† Post, 162.

the spirit of resistance? Let them take arms. . . . What signifies a few lost in a century or two? The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure. It is a mistake that the fighting or brave men make eternal enemies. Never was there a greater mistake on the face of the earth."

CHAPTER IX

DOUGLAS CROWDS LINCOLN INTO WAR

THE SENATE'S SPECIAL SESSION, MARCH 4, 1861—DEBATE ON LINCOLN'S INAUGURAL ADDRESS—ITS UTTERANCES PRAISED BY DOUGLAS—SOUTHERN SENATORS REBUKED BY DOUGLAS—DOUGLAS JUSTIFIED IN SUPPORTING LINCOLN'S PLAN TO LEAVE SLAVERY ALONE—DOUGLAS'S STRONG POLITICAL BACKING—DEBATE WITH SENATOR BRECKENRIDGE—DOUGLAS PRESSES LINCOLN—LINES UP HIS FOLLOWERS FOR THE FIGHT—RESPONSE FROM DOUGLAS MEN IN ILLINOIS—TREASON IN INDIANA—THE CASE OF SENATOR JESSE D. BRIGHT—DOUGLAS STARTS FOR SPRINGFIELD—MEETINGS AT INDIANAPOLIS—LEW WALLACE AIDED BY DOUGLAS—DOUGLAS SPEAKS IN SPRINGFIELD AND CHICAGO—DEATH.

AT noon of March 4, 1861, the Senate of the United States met in special session "to receive and act upon such communications as may be made to it on the part of the executive," pursuant to the call of President Buchanan made on the 11th day of February preceding. Among the new Senators sworn in were the out-going Vice-President, the pro-slavery candidate against Lincoln and Douglas, John C. Breckenridge of Kentucky. A few months later Senator Breckenridge joined the Confederacy as a Major General, and stayed with it to the end. I heard much about him in Bristow and Harlan's law offices, and shall always remember Henry Watterson's obituary of him in the "Louisville Courier Journal."

That special session was one of the most, if not the most, important session the United States Senate ever held, and it is

the least noticed by the biographers and historians. It demonstrated that neither George Ashem of Massachusetts, nor anyone else, brought Stephen A. Douglas to the support of Lincoln's administration, but that Douglas, laying aside the question of morals, "argued it out," as the lawyers say, and debated the practicability or impracticability of Lincoln's Thirteenth Amendment, and with the end of that Session made it plain that the only course that Lincoln could adopt was the plan of Senator Chandler—the plan of force under the banner of "Squatter Sovereignty."*

"At 1:15 p. m., March 4, 1861," reads the Senate record, "the out-going President, the Honorable James Buchanan, and the incoming President, the Honorable Abraham Lincoln, entered the Senate Chamber arm in arm." Then the procession, including the Senators, proceeded to the front portico, where Mr. Lincoln delivered his edited Inaugural Address, and took the oath of office. The senators returned to the Senate Chamber and adjourned.

When the Senate met the next day, the first debate was upon the Inaugural Address. Before it was printed Senator Thomas L. Clingham of North Carolina attacked it as a war measure. Immediately, says the record, Senator Douglas answered, saying, "After a critical analysis of it, I come to the conclusion it is a peace offering rather than a war measure."

This conclusion he then demonstrated in an elaborate analysis of the Address, in which he avowed his support of the proposed Thirteenth Amendment and of a Constitutional Convention to make definite and specific a duty the fathers had not performed.

"In my opinion, if I have understood the Inaugural Address aright, he [Mr. Lincoln] has sunk the partisan in the patriot, and he is entitled to the thanks of all conservative men to that extent. . . . While I expect to oppose the administration on all the political issues of the day, I trust I shall never hesitate to do justice to those who, by their devotion to the Constitution

* Ante, 74.

and the Union, show that they love their country more than their party."

Mr. Blaine says that Senator Mason of Virginia fared badly at Douglas' hands in this debate, but this is not quite true. In answer to Douglas' statement that Mr. Lincoln "was a man of peace and his message was a message of peace," Mr. Mason said that the President was not fortunate in having as his spokesman a man who had, before the election, in the City of Norfolk of the State of Virginia, warned them that secession was treason and that treason meant war.

As in the past, Douglas again demonstrated Blaine's characterization of him, as the best debater America ever produced. Replying to Senator Wigfall as to what he would advise the President to do as to Fort Sumter, he answered, "I would have no hesitancy in replying to the Senator from Texas, if that Senator held himself bound by his oath to support the Constitution of the United States, and to protect and aid the honor of the country instead of communicating it to the enemy."

To Senator Mason, who asked him the same question, he answered, "If the Senator from Virginia had voted right in the last presidential election, I should have been, perhaps, in a position today to tell him authoritatively what ought to be done. Not occupying that position, I must refer the Senator from Virginia to those who have been entrusted by the American people with the decision of that question."

On the legal side, in the practice of law, there are the ultimate and the evidentiary facts. But the lawyers and the judges, like the historians, are so lost in the maze of the evidentiary facts that they often lose sight of the ultimate facts, which are usually very few at best.

If "neither slavery nor involuntary servitude," as copied out of the Ordinance of 1787 for the government of the Northwest Territory and written into the Thirteenth Amendment, is one of the few ultimate facts in our economical and constitutional development, then Abraham Lincoln's declaration before

the world that he was willing to make slavery express and irrevocable is another of the ultimate facts that should not be mixed up with the evidentiary facts. It certainly palliates the folly of the slaveholder for heeding the advice of the secessionists. It certainly exculpated Stephen A. Douglas for saying he was for the Constitution as the fathers wrote it, and endeavoring simply as an advocate "to get them back" under this pledge of Mr. Lincoln, to make it stronger for slavery than the fathers did.

The biographers and historians condemn Douglas as a pro-slavery man because of his advocacy of this plan of Abraham Lincoln's. Why is Douglas any more immoral than Lincoln unless, as some of the churchmen argue, Lincoln was not in good faith in proposing the Thirteenth Amendment? "He was maneuvering to put the secessionists in the hole." It is such assertions that justify our questioning the morals and the statesmanship of the Church.*

On the 11th of March, 1861, Edwin M. Stanton wrote Ex-President Buchanan that the White House was grateful to Senator Douglas for coming to its aid. Certainly all the odium ought not fall on Douglas for failing to put over Lincoln's slavery amendment. It was an impossibility after Chandler's speech. Not a word did Chandler retract, but on the contrary he urged Mr. Lincoln, as before stated, to about face and arrest Wigfall and Breckenridge. Not a Republican Senator by word of mouth supported it. Republican Senators as well as Democratic and Secessionist Senators questioned Senator Douglas' right to speak for President Lincoln.

As to when President Lincoln and Senator Douglas came to their understanding,† the lawyer will suggest that it was soon after it was manifest in that lawsuit in that short special session of the Senate that Lincoln's or Seward's Thirteenth Amendment with slavery could not be put over. Under the law of conspiracy, it is not even necessary for the participants

* Ante, 51.

† Ante, 65. Post, 127, 132 note.

to meet, not even to communicate with each other. All that is necessary to make them partners is to act in concert.

Aside from the inherent soundness of "Squatter Sovereignty," Douglas had a million and a quarter of men behind him who would fight, and Wade and Chandler wanted to go down the line behind Douglas. The purpose and object of the war, as the best of all Douglas men, General John A. Rawlins, declared, was not to destroy the States. Rawlins put it better than Lincoln did to Horace Greeley—"saving the Union with or without slavery." "An indestructible Union of indestructible States, was what we fought for,"* he said, at the first meeting of the Army of the Tennessee in 1866.

Replying to the speech of a Republican Senator that it was not magnanimous for him, Douglas, to advert to the fact that they, the Republicans, had abandoned the Wilmot Proviso and adopted his Kansas-Nebraska Bill, Douglas answered:

"I did not—in addressing the Virginians through their Senator Mason—refer to it in a taunting spirit, or of triumph, but for a much better and more patriotic purpose. I referred to it for the purpose of showing that the slave-holding States, now in this Union, have no cause of complaint that they have not now their just rights in all the territories of the United States. I referred to it for that reason, and that I take it to be a patriotic object. My object was to deprive those who wished to precipitate the Border States into revolution, of any pretext for doing so, so far as the territorial question was concerned, for the reason that all has been granted on the subject that the South, in former times, had demanded."

Senator Wade, the author of the Colorado, Dakota and Nevada Bills, came to Douglas' rescue and explained that they had adopted the bills to be generous. This was the outcropping of the old "conspiracy." Senator Breckenridge did not like the reference and questioned the good faith of the Republicans. He read the Republican platform at Chicago which, as we

* Ante, 138.

have already shown, was peremptory in directing that Congress should abolish slavery in the territories.

Senator Douglas then said:

"The Senator from Kentucky has told you that the Southern States now in the Union will never be satisfied to remain in it unless they get terms that will give them either a right, in common with all the other states, to emigrate to the territories, or will secure to them their rights in the territories on the principle of equitable division.

"I wish to call the attention of that distinguished Senator to the fact that, under the law, as it now stands, the South have all the rights which he claims. . . . For the first time, under Republican rule, the Southern States have secured their equality of rights in the Territories for their slave property which they have been demanding so long.*

"Hence, I thought the Senator from Kentucky did you great injustice the other day when he said that you had not abated one iota from the platform of your party, or the creed of the Republication organization. I think that you have abated much. You have abandoned the aggressive policy of abolishing slavery in all the country south of the 37th parallel. You have made further sacrifices than that for the sake of peace and Union. I give you credit for them. You have passed territorial bills, organizing the territories of Colorado, Nevada, Dakota, on the principle of—what?—the Kansas-Nebraska villainy.†

"I know that some politicians, for political effect, were in the habit of so representing it some years ago in order to get votes, but I never supposed any of them believed it."

On the 22nd day of March, 1861, the Missouri Constitutional Convention, which had been called by a secessionist governor and legislature, deprecating secession, adjourned until October. Missouri's electoral vote had been cast for Douglas and "Squatter Sovereignty."

On the 26th of March, the "Little Giant" felt they had Kentucky, so he pressed Senator Breckenridge to the wall.

* Ante, 92.

† Ante, 58, 92.

In the final clean-up of Senator Breckenridge and the secessionist propaganda, Senator Douglas said:

"I desire that the people of Kentucky and of every State of the Union shall know the facts. I desire to put the Republican Party out of power as much as the Senator from Kentucky does; but I will not foster unkind feelings and apprehensions of danger in the South for party purposes. I will tell the truth about the conduct of the Republican Party, even if it operates to their credit, and to the injury of my own party. They have passed their laws, I have given them credit for what they have done. The Senator does not deny that they have passed these laws; but he professes to believe that they do not intend to carry out this policy in the future. . . . It will not do for the Senator to deny that they intend to do what they have done.

"The Senator attempts to prove that such is not the purpose of the Republican Party,* by reading what they said in the Chicago platform before the election, to contradict what the party has done by its recorded votes.† The Chicago platform cannot prove that any Republican in this Senate did not, since that platform was adopted, vote on the yeas and nays for the organization of each Territory without the proviso."

Quoting from the record:

Mr. Breckenridge: "Ask them the reason."

Mr. Douglas: "I am not talking with them about the reason. I am talking about the fact."

Breckenridge: "He speaks of the fact. The significant fact depends often on the reason for it. There they sit. Let him ask them the reason now."

Douglas: "Mr. President, I have spoken of this fact, and attributed to them what I considered the reason, that it was a patriotic regard for the country, to prevent further disruption of the Union. No one of them has dissented. . . . *It is enough* for me that they have done this act, and that the act which they have done has put the South in a better position than it ever was in before,—has given the South equality in all the territories.

* Ante, 92.

† Ante, 122.

I want the facts known to the people of Kentucky, not to injure the Senator, as he supposes, but to enable him to rally the Union men, and to vote down and crush out every disunionist in Kentucky. That is what I want it for.

"I want to strengthen his hands since he tells us of his devotion to the Union and how anxious he is to prevent the secession of the Border States. I am not willing that disunionists should cut his throat, and get his State out of the Union, depriving him of his seat for the next six years in this Chamber. I want to save to the country his valuable services for the next six years. I want to save the State of Kentucky from disunion. I want to strengthen his hands as the leader of the Union men—as I now understand that to be his position—and enable him to annihilate all secessionists in Kentucky, by demonstrating that she is safe in the Union, even under this Republican Administration. That is my object. It was intended as an act of kindness, therefore, to the Senator from Kentucky; and I am glad to be assured by him that I misapprehended him when I supposed that he thought Kentucky ought to secede if she did not get the terms of which he spoke. But it seems that he was only expressing an opinion of what Kentucky would do, but not what he wished to have her do. I am glad to be informed that he does not think she ought to secede in that contingency."

Breckenridge: "I said nothing on that subject, sir."

Douglas: "The Senator corrected my inference that he thought she ought; and by correcting that inference, I suppose he meant to intimate that it was a wrong inference, or otherwise he would not have contradicted it. But, sir, I will not prolong the debate. . . . I have only answered such positions as I deemed essential to the encouragement of the Union men North—and South,—to the end that they might be able to rally the patriotic of all parties and put down disunion and secession in any State of the Union."

Having lined up the followers of "Squatter Sovereignty" for a fight,—that is, he had them across the river and all the bridges and boats burned,*—Douglas returned to the proposi-

* Ante, 84.

tion he had put up to the Senate at the beginning of the session :

"There are three methods of ending the unhappy conditions which divide the country. One is by peaceable means, the second by acquiescing in secession, and the third is by war."

Declaring himself to be with Mr. Lincoln in his peace plans, for which the Republican Senators would not say a word, and which was manifestly a failure, he turned to the Republican Senators :

"Now, sirs, I repeat, that I desire to know from the *administration* whether they mean peace or war.*

"It is idle to evade the question, or attempt to evade it. It is no longer a question of enforcement of the laws, or of collecting of the revenue, or of taking care of public property. The question is whether we are going to reduce the Southern Confederacy by military force into subjection to our laws."

Never were there any political or personal relations between Seward and Douglas. A few days after the confirmation of the Cabinet, at a time when Secretary Seward was in favor of giving up Sumter, Gideon Wells, then Secretary of the Navy, urged Douglas to go with him into Seward's office—they had met in the street outside. Douglas refused because he said Seward had been dallying all winter. "He is bringing on a civil war. I authorize you to say, 'I am for the Union and will stand by the administration and all others in its defense, regardless of party'."

Aside from what we have just recounted, the personal relations between Lincoln and Douglas had always been pleasant and a senator always has the *entrée* to the president, especially if both are interested in the same side of any public question, so there was every reason why Douglas—leader that he was—should call on his late opponent and press him to it in the privacy of a personal conference; just as one lawyer would with another, and as Douglas had done in the open Senate. Indeed, it was not only Douglas' right and privilege, as a

* Ante, 100. Post, 183-264.

lawyer who had been arguing out his associate's or his chief's or senior's case in court, but his duty to call on that associate or chief without an invitation and put up to him in private what he as a lawyer had learned and what were his impressions from actual contact with the other side. That there were several interviews between the two men about this time, there can be no doubt.*

After maintaining the cause of the Union in the United States Senate, as we have heretofore shown, there ought not to have been any hesitancy in inviting Stephen A. Douglas to the White House.† It seems great credit is given to George Ashem of Massachusetts for extending the invitation, and some of the historians argue that this is what brought Douglas to the support of the government. The truth is, Douglas, as we have shown, had been "crowding Lincoln to it"‡—that is, crowding him into war, after he had argued out the case by showing that Lincoln's compromise and the Thirteenth Amendment were impossible. We have shown with what cordiality Douglas had met Lincoln, coming to Washington, calling on him at the Willard Hotel, and paying him all the personal attention one man could to another, when Lincoln visited the United States Senate before his inauguration. At the inaugural ball Senator and Mrs. Douglas were particularly attentive to Mary Todd Lincoln, who in the Spring days lost her affections to the "Little Giant," but stayed by her pledge to the "Rail Splitter."

As a lawyer reasoning from the methods of my profession, I here suggest to the historians and biographers that after the conclusion of the foregoing speech, Stephen A. Douglas, of his own volition, called at the White House. One of my legal preceptors, Thomas A. Hendricks, Commissioner of the Land Office, from August, 1855, to August, 1859, under both the Pierce and Buchanan administrations and never in sympathy with Douglas although he admired his force, is my authority

* Post, 132, note.

† Ante, 119.

‡ Ante, 126.

for the statement that in December, 1857, Senator Douglas uninvited called on President Buchanan to protest and warn him not to go in with the slave power and try to make Kansas a Slave State. Indignantly Buchanan in turn warned Douglas that all the Democrats who opposed General Jackson's administration were annihilated. Douglas responded, "Don't you know General Jackson is dead? Good day, sir." And then the Buchanan administration fared so badly at the hands of Senator Douglas that it had to get a new Commissioner of the Land Office, for Thomas A. Hendricks was looking to the future and never lost much time on a "dead one." By all the rules of my profession, then, Stephen A. Douglas had earned the right to call on his late opponent and co-counsel and ask him "to come up into the collar." He doubtless used the stereotyped expression, "Mr. President," in his formal greeting, but when he got down to the question at issue it was somewhat in this style:

"Now, Abe, you must quit dilly-dallying. Chandler, Wade and Wilson—not even Trumbull—will ever stand for your Thirteenth Amendment with slavery. Thad Stevens is venomous in denouncing it. It was a mistake on your part to put it in your inaugural address, utterly inconsistent with everything you have ever professed for the last seven years, and farther than I have ever gone or would go to placate the slave power.* Besides, it is an impossibility. This is war, not small politics. I have my whole crowd across the river.† It is up to you to bring yours over and we will clean them to the Gulf. Moreover, in the Senate I referred Mason of Virginia to you as to what our policy is to be. Were I in your place, it would be a straight declaration of war. If you continue to follow Seward's advice it will ruin not only your administration, but what is more important, our beloved country."

At any rate, the day after Senator Douglas called him from the floor of the Senate, Mr. Lincoln called for opinions from the cabinet about holding Fort Sumter,—he turned Seward

* Ante, 82.

† Ante, 84.

down for the first time,—and a few days later, notified the Governor of South Carolina that all negotiations for peace were off and that he would reinforce Fort Sumter at the first opportunity.

History records that the night Sumter was fired on Douglas told Lincoln he ought to call for 200,000 instead of 75,000 men—and word went to the country by telegraph that Douglas asked his followers to support the Government and the Union. “Zack” Chandler said the call ought to be for 500,000 men.

The next day, in Illinois, men like Grant, McClelland, Morrison, Phillips, Dickey and Ingersoll, and the peer of all the war produced, John A. Rawlins, all Douglas men, volunteered for the war. Rawlins it was who called the Galena meeting and made the speech that reminded Grant that it was his duty to go to the support of the government.

Meantime, the “grapevine” was continuing to bring news of Southern sympathy to the Southern cause from southern Illinois and even from northern Indiana.* The board of commissioners of one of the counties in “Egypt” actually passed an ordinance of secession taking their county out of the State. The Illinois Democrats, and especially the southern Illinois Democrats, recalled the narrowness of the Republicans of two years before (in 1858) in refusing to return the Democratic Congressmen who, at Douglas’ instance, had defeated the Lecompton constitution in Kansas and said, “Now, let the Republicans get out of the fix they are in,—they have split the Union.”

John A. Logan, a Democratic Congressman from one of the “Egyptian” districts of Illinois, re-elected the preceding November with 15,000 majority, not only talked in that way, but cursed Douglas and declared that while Douglas might sell he could not deliver the Democratic party. General Grant states in his “Memoirs” that after he took command of the 20th Illinois Volunteers he was afraid to let Logan make a

* Post, 136.

speech to the soldiers because of the report of Logan's bitterness towards the administration. The change wrought in Logan,—in part by a personal interview,—who afterwards became one of the ideals of the volunteer soldiers, going into the service as Colonel of the 21st Illinois, attests something of the power and force of Stephen A. Douglas' leadership and command over men.

The concern about Indiana was based on substantial facts. Overtures were being made to men in that State to join the Confederacy, and Thomas A. Hendricks, a known pro-slavery man, and the Democratic candidate for Governor the October before, was silent as a sphinx. Senator Jesse D. Bright and his associate, H. Fitch, whom he had caused to be elected by a rump legislature when Bright was re-elected the third time, in February, 1857, were known to be in close touch with the secessionists. Bright was a Northern man with Southern principles. Born in New York his father removed when he was a boy to Madison, Indiana. Precocious, he became the dominant power in Indiana. He had opposed Douglas' Kansas-Nebraska Bill and had supported Buchanan and Jefferson Davis in their attempt to make Kansas a Slave State under the Lecompton Constitution. He had always opposed Douglas and supported Davis. He owned a farm and slaves in Kentucky and spent much of his time there. June 6, 1858, before the Lincoln-Douglas debate, Chandler, Wade, Douglas and Trumbull had brought to a vote in the Senate a resolution that failed to pass by a vote of 23 to 30 to exclude Bright and Fitch because they had been improperly elected by that rump Indiana legislature of the year before.

During the winter of 1860 and 1861 Bright had avowed that secession was a constitutional right. But the extent of Bright's treason was not then known. On March 1, 1861, Bright wrote and delivered to one Thomas B. Lincoln the following letter:

“WASHINGTON, March 1, 1861

MY DEAR SIR:

Allow me to introduce to your acquaintance my friend, Thomas B. Lincoln, of Texas. He visits your capital mainly to dispose of what he regards as a neat improvement in firearms. I recommend him to your favorable consideration, as a gentlemen of the first respectability, and reliable in every respect.

Very truly yours,

JESSE D. BRIGHT.

To His Excellency Jefferson Davis,
President of the Confederate States.

This letter was found among Thomas B. Lincoln's papers when he was arrested on the 17th of August following, at Cincinnati, under a charge of treason. Based on it, a resolution was introduced in the Senate when it met December 2, for Bright's expulsion. Before the Judiciary Committee of the Senate, to which the resolution was referred, Bright ably defended himself:

“I felt at the date of this letter, in the language of the President, uttered three days thereafter, and repeated by himself and his political friends for weeks thereafter, that there could not, must not be war; that we were friends, not enemies; that our unfortunate sectional difficulties would be settled peacefully, but never by the power of the sword.”

The Committee, except for Senator Trumbull, its Chairman, reported that the evidence—the letter—did not justify expulsion. But on the floor of the Senate the old conspiracy with Douglas outcropped. Chandler and Wade were still implacable. At a caucus they decreed Bright's expulsion. It was urged in the debates on the floor of the Senate that Bright had, since writing the letter, opposed in the finance committee of the Senate the Treasury notes that had been put out at the special Session in July and the larger issue, which, while the Senate debate was going on, Elbridge G. Spaulding* and Thaddeus

* Post, 140-5.

Stevens* were whipping through the House over the objections of the administration and the New York bankers,—notes that became the “greenbacks” and won the Civil War. They had not much consideration for Mr. Lincoln’s political views as we have hereinbefore shown, nor for his financial views, as we shall hereinafter show. In short, it was urged that since writing the letter Bright had opposed on “constitutional grounds” giving the financial aid necessary to carry on the war. On February 5, 1862, by a vote of 23 to 14, he was expelled. The New York and the Pennsylvania senators, who were present as Republicans, and the New Jersey senators, were among the 14. Undoubtedly the passage the same day of the Greenback bill in the House, and the suspension of the specie payments by the New York banks, influenced the vote.

* A lawyer cannot quote hearsay evidence, and besides, it does not always prove what its proponents seek to establish.

Of Douglas, Lincoln told Thaddeus Stevens in Washington according to Owen Lovejoy, as recorded by Robert H. Browne in his “Life of Lincoln” (Vol. II, page 605), at a time when Stevens was assailing to Mr. Lincoln’s face, in the early days of his administration, the inefficiency of the Lincoln administration, especially Secretary of State Seward and Thurlow Weed, Secretary of the Treasury Chase, the stump speaker from Indiana, Caleb B. Smith, Secretary of the Interior, and simply rawhiding the life out of Secretary of War Cameron:

“On my arrival here, among the first to call was my life-long opponent, not as a mere formal ceremony, but fully alive to the exigencies of the great crisis of our country’s history, sincerely to offer his services.

“I refer to Judge Douglas, who has maintained himself as the leader of a larger party following than any other man in our history. Including Clay and Jackson, he makes three of our greatest leaders whose personal followers never deserted them. These were all ambitious and apparently more or less reckless when contending, but all the more calm and deliberate in action. Douglas most so of the three.

“Conceding would have given him the nomination in 1856, but he declined the conditions, which Buchanan at once accepted. He patiently boded his time until he could strike again, when in 1857-8 he defeated their scheme to take slavery into Kansas under the Lecompton Constitution. In 1860 he surrendered all his hopes of being elected President by refusing to do what so many men in all parties had agreed to do. By this he divided his party, and made my election in the early part of the campaign a possibility, and, before its close, almost a certainty.”

Then they quote Mr. Lincoln to the effect that after Douglas got his crowd in the trenches there could be a reorganization of the cabinet. And then and there Stephens accepted Lincoln’s leadership and agreed to abide by it.

But the record is that Douglas died very shortly and then Stevens went after the Lincoln administration harder than ever, and especially the Secretary of War.

“You don’t mean to say,” said Lincoln, “that Cameron would steal?” “No” said Stevens, “I don’t think he could steal a red-hot stove.”

Aside from Mr. Lincoln’s love of a story there were other reasons why he should put this statement of the Czar of the House up to the Secretary of War. Mr. Cameron got very mad and raised a great row. Finally Stevens consented to do what Cameron demanded—“retract.” He called at the White House.

“Mr. Lincoln, Cameron is very mad and made me promise to retract. I will now do so. I believe I told you I didn’t think he would steal a red-hot stove. I now take that back.”

The lawyer’s inference is that this last remark was directed to the President himself. At any rate Cameron went out of the Cabinet and the war policy of the administration changed. Post, 138

There was a final interview with President Lincoln, almost unmentioned in the biographies, and Senator Douglas started for Indianapolis and Springfield on the 20th of April, 1861. At Indianapolis Senator Douglas told Thomas A. Hendricks he had his final interview with Mr. Lincoln on the 18th. Beyond this the records and political gossip disclose nothing of the interview between Douglas and Hendricks.

Joseph Medill must have had some intimation from Lincoln as to the plan the President and Senator Douglas had arrived at in this last interview. A movement to the Gulf which Douglas should direct is one of the traditions of this time, to which color is given by the speech Douglas made at Indianapolis, and to which we will soon refer. The newspaper man may dig up what the biographer and historian does not of that understanding. The papers which Robert T. Lincoln turned over to the Congressional Library under the injunction not to print until 1947, may throw some light on that time. But what Douglas did is conclusive from the practical side that he was the best friend of all of the Union in that crisis. Mr. Medill could not have been ignorant of conditions at least in Southern Illinois, of the way Logan was cursing Douglas and the smallness and narrowness of the Republicans. Even after Logan became a Republican Joseph Medill was never one of his proponents. The first favorable mention of Douglas ever made in the "Chicago Tribune" was in an editorial in that paper of April 25, 1861:

"Mr. Douglas did not arrive in Springfield last night, as was expected. We hear from him at Columbus and Indianapolis, speaking in no doubtful and uncertain tone in favor of sinking all partisan differences and uniting firmly and heartily in the work of putting down treason and restoring the Union. His utterances, as reported in the Cincinnati papers, are frank, manly, and such as all Republicans can commend. He will find on his arrival at Springfield, that our party friends will not be slow to meet him in the conciliatory spirit by which he is animated, and it will not be their fault if the war for sustaining the honor of the old

flag is not prosecuted with all the earnestness and vigor that he may desire. We do what we have not done for many years—hail his coming with pleasure.”

Missing the trail at Bellaire, Ohio, on the 21st, Douglas addressed a large crowd of Virginians who came from Wheeling and other points by special trains. He helped start that revolt against the Old Dominion that had been brewing for over a hundred years and finally gave us the State of West Virginia. Arriving at Columbus that evening, he was called to the window of his hotel and again addressed a large crowd.

He reached Indianapolis on the afternoon of the 23rd. Word was sent out for a conference, and it was announced that that evening he would speak from the same balcony of the Bates House from which Mr. Lincoln had spoken a little more than sixty days before.

But it was a different kind of a speech from Mr. Lincoln's. It is a speech not even mentioned in the histories and the biographies, but it confirms a rumor that in that last interview with Mr. Lincoln, the plan was agreed on that Douglas should organize in the Northwest an army to clean the Mississippi Valley of treason, to the Gulf. The newspapers state that the abstract of the speech then published Douglas himself drafted. We quote a few sections:

“War is a calamity, greater, perhaps, than any other that could happen to us. But I call upon you, my countrymen, to take up arms, and never lay them down until your constitutional rights are recovered. . . .

“Our country is in danger, the Federal Capital is besieged by the enemies of the Union. . . .

“This is all done in violation of law and right, by a band of pirates, and Jeff Davis has issued his pirate's manifesto. That proclamation from Montgomery is nothing but piracy, and I hope every man who is or may be engaged in that unholy business may hang higher than Haman. . . . I would fight to the death in defense of our own rights. . . .

“Seven States have possessed themselves of the mouth of the

Mississippi, seized upon the forts and arsenals, and established custom houses to compel us to pay a tax to them. . . . In this great valley we can never consent to be isolated. We must repossess ourselves of the mouth of this great river."

An outlet to the Gulf in those days was as important, more important, than now by the East. The Nation had bought Louisiana in order to control the mouth of the Mississippi. The brief outline of this Indianapolis speech proves Douglas the best debater or advocate that America has ever produced.

The day following the publication of this speech Thomas A. Hendricks published a letter in the "Indianapolis Journal" and the "Sentinel," on the line of the Douglas speech that he was for the Union. It was the first word, the "Journal" said, from Mr. Hendricks for the government since South Carolina had seceded.

As a lawyer Abraham Lincoln could never have held his verdict. Had Douglas been elected president in 1860 the war except, perhaps, in the mountains of Virginia, would not have lasted ninety days.

Among the Indiana Democrats who conferred with the "Little Giant," at that Bates House conference, was a fellow-countryman, it might be said, Samuel E. Perkins of the Indiana Supreme Court, an orphan, a "bound out" boy in Vermont, who had subsequently made his way as will be hereinafter shown.* He was closer to the rank and file of the Indiana Democrats than the so-called leaders, like Senators Bright and Fitch, and Thomas A. Hendricks, and when it came to wielding the scepter,—making war, hitting up "the rebel republic,"—although it involved ignoring constitutional limitations, he could and did do it, as we will also hereinafter show. In this respect he also resembled that other remarkable product of Vermont, Thaddeus Stevens.†

As a candidate for re-nomination to the Supreme Court, in January, 1858, Perkins' following went behind Lew Wallace's

* Post, 196-8, 218.

† Ante, 132, note. Post, 147.

Special Resolution, reindorsing the Kansas-Nebraska Bill. It was put through in opposition to the Senators, the Buchanan Administration, and Thomas A. Hendricks, with Daniel W. Voorhees as spokesman for the opposition on the floor. Perkins was the motive power. It was the first time Jesse D. Bright was ever unhorsed in a Democratic convention. At the election that followed, Perkins was elected, and in 1860, Douglas got the Indiana delegation to Charleston over Bright's opposition. Major Elston, Lew Wallace's father-in-law, was one of his delegates.

Lew Wallace claims that he was a good loyal Douglas Democrat down into mid-winter, 1861, before Mr. Lincoln was inaugurated. He left the Democratic Party because, he says, he was invited to join the military men* of the South in opposing the incoming Lincoln administration. He is not as specific as to this event as a lawyer should be. His writings are conclusive that his is a high order of literary talent, but he could not act. He was a better drill master than McClellan. As Adjutant-General of Indiana, and drilling troops in the field, his work was invaluable. As Captain of the Montgomery Guards, before the Civil War, he won every prize drill in which his company entered, and every man of it was given a commission. With a voice that he could raise and lower, he could indicate with a changing cadence every movement in the manual of arms and every evolution with a clearness that no other drill master even approached.

One of his boyhood friends, Senator Daniel W. Voorhees, afterwards said, in a political debate in which personalities were a prominent feature and in which Mr. Wallace had assailed Voorhees for being disloyal in the early days,—“a General, with eight thousand veteran soldiers under his command, within the sound of one hundred and twenty cannons going off, who could not find his way into the fight, ought not to be questioning any other man's patriotism at this late date.” The

* Ante, 129.

allusion was to Wallace's failure to get into the fight the first day at Shiloh. General Grant afterwards forgave him and exonerated him, but, as I have heard him say himself, the private soldier never did. Voorhees also claimed that a man is not disloyal because he does not agree with every ill-advised measure advanced by or on behalf of an administration in time of war.

The day Governor Morton appointed Wallace Adjutant-General of Indiana, Wallace says the Governor told him there were no records of that department and no State law under which they could act. And herein comes Stephen A. Douglas. The Indiana Legislature had been called to meet in special Session on the 23rd day of April, 1861. Its members were assembled as Douglas made his Bates House balcony speech. My father was a member of that legislature and Chairman of the Military Committee of the House. His bill for organizing the militia of the State, which afterwards gave Governor Morton his great power, had for that reason failed to pass at the regular session. Many Republicans had refused to vote for the Bill because, as they said, they did not want to make the Governor a Czar. The Democrats were personally hostile to the Governor. Lew Wallace himself recounts in his *Memoirs* that from the day Morton left the Democratic party, in 1854, on the Kansas-Nebraska Bill, he had never spoken to Morton, until he, Wallace, walked into the Governor's office in the Winter of 1861.

After the coming of Douglas, his principal followers in that Legislature went behind the Gresham Military Bill, and although it took a big fight, the bill was passed. My father was one of the Republicans whose personal and political relations with the Governor were strained. And, while he could not influence his Republican brethren to abate their personal resentment to the Governor, he made his overtures to the Douglas Democrats. He was one of the Republicans who claimed that Douglas got the better of Mr. Lincoln in the

debates. As my father put it, and I heard him say to James G. Blaine in 1884, that Douglas was the lawyer of the Union Cause, he it was who justified from a legal and constitutional standpoint, the use of force to maintain the Union. He did it with all due consideration to the amenities of our profession and this is why he never had anything to retract as Mr. Lincoln did, and he possessed what Mr. Lincoln did not as a lawyer have, "force." He foreshadowed and outlined in what we have quoted* the position that afterwards became that of Thaddeus Stevens, Ben Wade and "Zack" Chandler, and that of the American government in war and reconciliation. Because the Constitution had made no provision for dealing with a State in rebellion, Stevens argued that the Constitutional limitations did not apply to the National Government in suppressing the rebellion by force of arms. And the President of the United States as Commander in Chief was not the government in time of war but only a small part of it. The war over he ridiculed as preposterous the claims of the Constitutionalists like Thomas A. Hendricks, then a United States senator from Indiana, and to some extent that of Lincoln, that the rebellious States immediately and *ipso facto* with the President's consent resumed their old relations with men in the Senate and House.† Harsh and severe as his plan was it was logical, legal and in keeping with Douglas' declared purpose of "grinding the slave power to powder." Jeremiah D. Black, although opposed to him said Stevens was the best American lawyer of his time. And the fact that the Fourteenth and Fifteenth Amendments, Stevens' work, are not in all respects enforced, does not alter the truth of Douglas' prediction that the "South would have a woeful ending." Men would not fight for abolition, that is, would not promote a John Brown servile insurrection which Governor Morton wanted my father to go into, and which brought a rebuke that widened the breach between them; and Lincoln's Thirteenth Amendment with

* Ante, 134.

† Post, 187.

slavery was an impossibility. "An Indestructible Union of Indestructible States," as the fathers had made it, was the rallying cry. To the Douglas Democrats my father, as the Chairman of that Military Committee, said, "From this on, I am a Union Man. What my politics will be after the war, conditions will determine."

April 25, my father wrote, "The Democrats without a single exception are for the government and war. We could raise 50,000 soldiers in thirty days in Indiana alone." But Lincoln would not even take all that were then offered. Of the 12,000 who came, they had to send 6,000 back home. Lincoln was not an executive man. Douglas would have accepted the 50,000 and made a quick ending. And yet the men who made a botch of the World's War say the volunteer system is wrong.

On April 25, Senator Douglas addressed the Illinois Legislature in joint session in a speech in which he said, "There are only two parties, Patriots and Traitors." He remained in Springfield until May 2, when he went on to Chicago, where after a great speech for the Union he was mortally stricken, and on the 2nd of June, died. Had he lived, it would not have taken the President of the United States two years to have found out the brand of whiskey that General Grant drank.*

* Post, 182

CHAPTER X

FINANCING THE UNION

HEAVY TREASURY DEFICIT AT END OF BUCHANAN'S ADMINISTRATION—NEW ADMINISTRATION EMPOWERED BY CONGRESS TO BORROW \$250,000,000—TREASURY NOTES ISSUED FOR \$50,000,000 AND CONTRACT MADE WITH EASTERN BANKS FOR \$150,000,000 IN GOLD—PRESIDENT LINCOLN RECOMMENDS ESTABLISHMENT OF A SYSTEM OF NATIONAL BANKS—HUGH MCCULLOUGH'S ATTITUDE ON GOVERNMENT FINANCING—SECRETARY OF THE TREASURY CHASE DILATORY IN HIS RECOMMENDATIONS—ELBRIDGE G. SPAULDING DRAFTS A NATIONAL BANKING ACT—ADVOCATES MAKING TREASURY NOTES LEGAL TENDER AND REDEEMABLE—REDEMPTION FEATURE STRICKEN OUT AT SECRETARY CHASE'S SUGGESTION—THADDEUS STEVENS SUPPORTS THE BILL—ROSCOE CONKLING OPPOSES IT AND INTRODUCES A SUBSTITUTE.

CUSTOMS receipts had decreased as secession progressed. Business men on both sides "hedged" the future by sending their gold abroad. But on the 9th of January, 1861, President Buchanan came out unqualifiedly for the Union,* and on the 11th of February John A. Dix of New York, Howell Cobb's loyal successor in the Treasury, recommended that the incoming administration be authorized to borrow the sum of \$15,000,000. Mr. Dix had previously reported to the House Ways and Means Committee that the deficit in the Treasury of the United States on the 4th of March would be \$9,901,118. A few days later John Sherman, chairman of the Ways and

* Ante, 66, 98.

Means Committee, stated that the deficit at the end of President Buchanan's administration would be \$20,000,000.

By several acts of Congress, approved by President Buchanan, the new administration was empowered to borrow up to \$47,000,000. The last of these acts was passed, and was signed by President Buchanan, March 2, 1861, two days before the inauguration of President Lincoln.

Under the authority of this legislation, the new Secretary of the Treasury, Salmon P. Chase, borrowed, up to July 1, 1861, a total of \$21,262,912.80, which sum represented a liberal discount from the face of the bonds, the last loan made at this time taking bonds with only two years to run, and Treasury notes payable on demand in coin, of a total face value of \$8,994,000, to realize the net sum of \$7,922,553.45.

Congress met in special session on July 4, and Secretary Chase reported a cash balance in the Treasury of \$2,355,635, with bills payable amounting to \$21,393,450.

July 17, Thaddeus Stevens, the new Chairman of the House Ways and Means Committee, called for the previous question, and the Secretary of the Treasury was given authority to borrow \$250,000,000. Of this sum, should the Secretary consider it advisable, \$50,000,000 might be in Treasury notes payable on demand,—the kind that Jefferson approved of in 1812 and of the order of Continentals. Congress pledged the faith of the Nation to make good these securities.

Secretary Chase ordered the Treasury notes printed and paid them out to the soldiers, and to contractors for supplies, and made a contract with the associated New York, Philadelphia, and Boston banks for \$150,000,000 in gold to be delivered to the Treasury in three installments of \$50,000,000 each, namely on August 19 and October 1, 1861, and February 5, 1862,—the banks accepting in payment Government bonds at a liberal discount from their face. This contract was soon to break the associated banks.

A great majority of the State banks had failed in the panic

of 1857, when even in New York City every bank but the Chemical had closed its doors. But up to the time that the associated banks suspended specie payments, namely, December 29, 1861, only gold and silver had been recognized as money,—under the Constitution of the United States and as defined by Daniel Webster. Webster's definition is still the accepted one.

"The circulating medium of a commercial community must be that which is also the circulating medium of other commercial communities, or it must be capable of being converted into that medium without loss. It must be able, not only to pass in payments and receipts among individuals of the same society and nations, but to adjust and discharge the balance of exchanges between different nations. It must be something which has a value abroad, as well as at home, and by which foreign as well as domestic debts can be satisfied. The precious metals alone answer these purposes. They alone, therefore, are money, and whatever else is to perform the offices of money must be their representatives and capable of being turned into them at will."

Long before Congress met in its regular session, right under the shadow of the Capitol, United States Treasury notes were at a discount of twenty per cent. Even as a war measure, both President Lincoln and Secretary Chase were opposed to them, and afterwards, as we shall show, Mr. Chase, as Chief Justice of the United States, declared them unconstitutional.*

Meantime, the Confederate States Government was issuing similar "treasury notes,"—\$1,000,000 on March 9, 1861, and \$20,000,000 on May 16, 1861,—declaring them legal tender, and making it treason, punishable with death, to refuse to receive them at face value.†

That Mr. Chase was not strong, either as an executive or as a financier, is evidenced by the fact that he was not ready with his recommendations when Congress met in regular session, December 2, 1861. It has been intimated that possibly

* Post, 203.

† Ante, 28-9. Post, 268.

there was a purpose on his part, namely, to break the State banks as a means of bringing about a National banking system. Be that as it may, in his annual message to Congress, President Lincoln adhered to "the money of the Constitution" and recommended the establishment of a system of National Banks, and the issuing of National Bank notes as a substitute for the Treasury notes.

Hugh McCullough, the best banker of his time and one of the most efficient Treasury heads the Government of the United States has ever had,—perhaps, as will be hereinafter shown,* the most efficient on the "practical" side,—says that the suspension of the associated banks might have been indefinitely postponed by a manipulation of Government warrants through the clearing houses. A good deal of financing, exchange, coining money, and banking, is simply plain manipulation, but at that, Mr. McCullough says that there is a moral side to the question,—a limit to the amount of manipulation or inflation that a government or a banker may indulge in. This rule was not observed on either side of the Atlantic during the World War. To quote McCullough's words:†

"No bank in the United States, the capital of which was a cash reality, and whose managers were not thieves or borrowers of its money, has ever failed. All bank failures are fraudulent, either by mismanagement or deception in regard to capital, and all who are responsible for such failures are betrayers of trusts, and should be punished as criminals."

Jay Cook, the Philadelphia banker, who became, through Mr. Chase, fiscal agent of the United States to sell the bonds to the people, says point blank that Mr. Chase's trouble was want of executive capacity.

Be it remembered, the Secretary of the Treasury makes his annual reports to Congress, not to the President. It was on the 9th of December before Mr. Chase's report went to Congress, and the 15th before it was printed. It was referred to

* Post, 191.

† "Men and Measures of Half a Century," p. 131.

the Ways and Means Committee of the House, and then to a sub-committee of three members with Elbridge G. Spaulding as chairman. This sub-committee later became the Finance and Banking Committee of the House.

In his report, Mr. Chase recommended a bond issue, increased taxes, increases on income and internal revenue, and a National Bank System with a National banking currency (such as we now have), to take the place of Treasury notes. He was easily able to show that a tax of ten per cent on State bank notes would be constitutional, and it was subsequently so held by the United States Supreme Court. This tax, afterwards imposed, put most of the State banks out of business. When the associated banks suspended specie payments, that is, payments in coin to their customers, on December 29, 1861, it meant that they would "lay down" on the Government when, on February 5, 1862, the last installment of their contract to furnish coin would mature.

So, on the 30th day of December, 1861, the Secretary of the Treasury and the President of the United States were "turned down" by a comparatively unknown man,—a man unheard of today,—Elbridge G. Spaulding, member of Congress from the Buffalo district of New York, a banker and man of affairs, strong on the executive side.

Mr. Spaulding was a writer, not of the literary or newspaper type, but a syllogist, and syllogisms travel farther than eloquence or rhetoric. In the early 50's he had served as Mayor of Buffalo. He built in that city in 1845, and rebuilt in 1852, the building on Main Street still known as "The Exchange," in which he maintained his bank, and in which Grover Cleveland had his first law office. He was President of the Mechanics and Farmers Bank of Buffalo, which he had organized at Batavia, New York. After the passage of the National Banking Act, he converted this bank into a National Bank, and as such it continued as a prosperous institution until his death in 1898, when it was consolidated with another

National bank of Buffalo. He died a rich man. He became a little miserly towards the end, it is said,—not a bad quality for a banker. Most bankers are too much on the speculative order, and therein lie many of the bank failures.

At the time the banks contracted to deliver to the Government the \$150,000,000, aside from the gold and silver in the "stockings" of the country, estimated at \$100,000,000, there was but \$98,000,000 in coin in the entire United States, and of this, \$26,000,000 was in the banks of the Confederate States. France and England were then against us, according to Blaine:*

"Confederate bonds were more popular in England than the bonds of the United States. The world's treasuries were closed against us. The banks of Europe, with the Rothschilds in the lead, would not touch our securities. Their united clientage included the investors of Great Britain and the Continent, and a popular loan could not be effected without their aid and co-operation. We were engaged, therefore, in a three-fold contest, a military one with the Confederacy, a diplomatic and moral one with the governments of England and France, a financial one with the money power of Europe."†

But California alone, since the discovery of gold on the American River in 1848, had produced \$750,000,000 of that metal, and the indications were that there was much more to come. The domain of the newly created territories of Colorado and Nevada, based on "Squatter Sovereignty," had been for years producing both gold and silver, and the latter metal bid fair, as it soon did, to outstrip California's production of gold bullion, which as we have stated, came in such volume as to demonetize silver.

Before "turning down" the President and his Secretary of the Treasury, Mr. Spaulding called on Secretary Chase for his National Currency Bank Bill. The Secretary had no draft prepared. Mr. Spaulding then shut himself up in his room in the National Hotel for three days of the Christmas vacation

* "Twenty Years of Congress," page 409.

† Post, 210.

and drafted a National Banking Act containing sixty sections. He had two hundred copies of the bill printed for the use of the Treasury and the House Committee on Ways and Means. But, as Mr. Spaulding records, the bankrupt State banks were still powerful, and concluding that a National Banking Act could not be put through Congress for several months, Mr. Spaulding, on his own motion, drafted a short bill in a single paragraph, declaring that, for temporary purposes, the Secretary of the Treasury should issue \$50,000,000 of Treasury notes on the faith of the United States and that they should be legal tender for all debts, public and private. By unanimous consent on December 29, 1861, he introduced it into the House, where it was twice read, and then referred to the Committee on Ways and Means.

Before it passed the House the bill was amended so as to provide that the Treasury notes it authorized might be redeemed at any time after five years in six per cent, twenty-year bonds of the United States, an issue of \$500,000,000 of which was provided for by another amended section of the bill. This provision emphasized its temporary nature, as was the purpose of its author. But before we conclude, we will show how the redemption feature was stricken out at Secretary Chase's suggestion and that irredeemable paper is therefore now a part of our permanent monetary system.

It was a most momentous step for the Government to take, and it occasioned a great debate, both before the bill came out of the Committee and afterwards, in the House and in the Senate, and later on in the Supreme Court.

On the 11th of January, 1862, the Boston, New York and Philadelphia bankers met the Finance Committee of the Senate and the Ways and Means Committee of the House, in Secretary Chase's office, to state their opposition to the bill. James Gallatin of New York was the main speaker on behalf of the bankers, and argued against the legal tenders, while the only man to defend them was Elbridge G. Spaulding.

Mr. Spaulding claimed for the Treasury notes as much virtue of par value as the notes of the banks which had suspended specie payments,—the banks could not furnish gold, and he would permit no speculation by bankers and others in government bonds and securities, damaging the credit of the Government by sending its paper through the “shaving” shops of New York, Boston and Philadelphia.

Thaddeus Stevens at first thought the bill unconstitutional, for he believed in Webster’s definition of money,* but later he came to Mr. Spaulding’s assistance and reported the bill favorably to the House, saying, “This is a bill of necessity, not of choice.” But Spaulding made the main supporting argument.

Meanwhile, “Thad” Stevens was merciless in swiping the opposition. The strongest men in the House,—except Stevens, who never had a superior as a parliamentary leader,—men like Roscoe Conkling,† Justin S. Morrill, George H. Pendleton, and Clement L. Vallandingham, who was afterwards banished from the Union for treason, opposed the bill on economical, constitutional and moral grounds. Especially did Vallandingham press the constitutional and moral objections.

Mr. Conkling denounced the bill as a confession of bankruptcy, and introduced a substitute authorizing a larger issue of bonds which might be disposed of by the Secretary of the Treasury on such terms as the bankers might grant. Stevens disposed of Conkling and his bill in short order by putting Conkling and Vallandingham in the same class.

As to Conkling’s bank proposition, Stevens said:

“Banks would issue unlimited amounts of script which would become trash, and buy with it good bonds of the United States. Was there ever such a temptation to swindle?”

“If we are to use notes of the suspended banks to pay our expenses, why not use our own?”

“The gentlemen from Vermont [Mr. Morrill] and Ohio

* Ante, 142.

† Post, 214.

[Mr. Pendleton] think it an *ex post facto* law. It is not wonderful that my distinguished colleague from Vermont, not being a professional lawyer, should not be aware that the *ex post facto* laws prohibited by the Constitution refer only to crimes and misdemeanors, and not to civil contracts. The gentlemen from Ohio no doubt knew, *but forgot it*.

"Where do gentlemen find any prohibition on Congress against passing laws impairing contracts?*" There is none, though it would be unjust to do it. But this impairs no contract. *All contracts are made not only with a view to present laws, but subject to the future legislation of the country. We have more than once changed the value of coin.* Neither our gold nor our silver coin is as valuable as it was fifty years ago. Congress in 1833, I believe, regulated the weight and value of silver. They debased it over seven per cent, and made it a legal tender. Who ever pretended that that was unconstitutional?"

But it was for the soldier that Mr. Stevens was especially concerned:

"While these men have agonized bowels over the rich man's case, they have no pity for the poor widow, the suffering soldier, the wounded martyr to his country's good, who must receive these notes without legal tender, or nothing, and who must give half of it to the Shylocks to get the necessities of life. Sir, I wish no injury to any, nor with our bill could any happen; but if any must lose, let it not be the soldier, the mechanic, the laborer or the farmer."

There was no objection to issuing these Treasury notes and paying them to the soldiers so long as they were not made legal tenders, said Stevens. That the bankers, and the creditors of the Government, both in Europe and this country, in the stress of the war, should have gold and silver, was preposterous, as was the claim of Conkling, Morrill, Pendleton and Vallandigham.

What would perhaps delight the soldier of today is the way one of Stevens' lieutenants "hit up" the advocates of

* Post, 152.

“sound money.” William Kellogg, Member of Congress from Illinois, said :*

“I say, Sir, that the policy which makes payment in Treasury notes to the soldier proper and honest, and dishonest to make them a legal tender in payment of private debts, is a policy that I denounce as unjust and indefensible. I condemn it unless it shall be equally binding upon the citizen at home as to the soldier in the field. To the winds with such logic and to hell with such morals !”

* Congressional Reports, Volume 57, page 680.

CHAPTER XI

"LEGAL TENDER"

SPAULDING PUSHES HIS LEGAL TENDER BILL—HOW THE "LEGAL TENDER" OF THE CIVIL WAR WAS MISUSED—CHARGES AGAINST SECRETARY OF WAR CAMERON—CAMERON RESIGNS AND IS SUCCEEDED BY STANTON—PRESSURE ON PRESIDENT LINCOLN TO REMOVE SECRETARY SEWARD—SPAULDING'S ARGUMENTS—THE EASTERN BANKS DEFAULT ON THEIR GOVERNMENT GOLD CONTRACT—THE SPAULDING BILL PASSES THE HOUSE.

CONTEMPORANEOUSLY with the introduction of the legal tender feature into our monetary system in the shape of Mr. Spaulding's* National Banking Act, the House leaders, under Mr. Stevens' guidance, started an investigation of the operation of the War Department and of the Northern Central Railroad, of which Simon Cameron, Secretary of War† was then president. They showed where a great deal of the money which they had authorized the Secretary of the Treasury to print had gone. They charged that Mr. Cameron, as Secretary of War, had contracted with himself, as president of the railroad, for the transportation of troops, at exorbitant rates, that he had bought ring-boned, spring-halted and spavined horses for the army, and that he had made contracts for arms, horses and mules at excessive prices when the law provided that the contracts should be made through accredited army officers under regular procedure. Secretary Cameron denied these charges, and the contracts were then produced with his signature alone.

* Ante, 146.

† Ante, 132, note.

These irregularities were traced very close to Secretary of State Seward, by showing that Seward's man, Thurlow Weed, in New York, working with some of the Simon Cameron politicians of Pennsylvania, had sold the Government all kinds of supplies, including even steamships, at unheard-of prices.

By a resolution, the House publicly censured the Secretary of War, and the result was that on the 11th of January, 1862, Mr. Cameron resigned his Secretaryship. He was shortly nominated for the post of Minister to Russia, but instead of confirming him from the floor of the Senate, as was the custom, there was much objection, and a bitter fight on the confirmation was made in executive session. However, he finally got through.

Then it was that Edwin M. Stanton, Zachariah Chandler's friend, was made Secretary of War, not only to be impervious to the Cameron influence but to that of Mr. Seward, and also as a recognition of the power of the men of force. A year later a committee of Senators, headed by Benjamin F. Wade, demanded Seward's resignation of President Lincoln, and they almost put it over. Seward was saved by Chase, who had acknowledged the sovereignty of Congress.* Chase threatened to resign if Seward was dismissed.

On the 9th of January, 1862, Mr. Spaulding secured the "private opinion" of Edward Bates, the Attorney-General, that the Treasury notes would be constitutional as legal tenders, and, on the 29th of January, a letter from Secretary of the Treasury Chase said that the Legal Tender Bill should be passed.

Mr. Spaulding had been educated for the law and had practiced with success. Unlike most lawyers, he had not only made money, but he had saved it, and it was his savings that enabled him to go into the banking business. The exposition which he made of the legal and constitutional questions underlying the legal tenders was followed all through the debate, not only

* Post, 205.

in the Senate but in the Supreme Court of the United States. He asserted for the first time that "the Government of the United States is not prohibited by the Constitution from issuing Treasury notes on demand, and making them a legal tender in payment of all debts within its jurisdiction." The prohibitions in the Constitution* against coining money; "making anything but gold and silver coin a tender in payment of debts," only runs against the States, he said, "but this section does not at all restrict the sovereign power of the United States."

"Gold and silver, by long practice—a practice that has continued for centuries among all nations,—has become the legal money of the world in all commercial transactions.

"Its real intrinsic value is not as great as that fixed upon it by governments. All governments fix the value of gold and silver, and without the government stamp, gold and silver would be a simple commodity, like other things having intrinsic value. Some governments fix the value of coin higher, and some lower, just as each, for itself, chooses to determine.

"You cannot borrow gold and silver. You cannot borrow depreciated state bank notes, except at ruinous rates of discount. The new banking system cannot be made available in time. Your tariff and tax bills cannot avail, how then can the Government be carried on?

"The only way in which it can be done is by issuing Treasury notes, payable on demand, and making them a legal tender in payment of all debts, public and private. This will bring into full exercise all the high powers of Government under the Constitution."

The Constitution of the United States confers on Congress the Power :†

(1) To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States.

(2) To borrow money on the credit of the United States.

* Article 1, Section 10.

† Article 1, Section 8.

(3) To regulate commerce with foreign nations, among the several States and with the Indian tribes.

(5) To coin money, regulate the value thereof and of foreign coins, and to fix the standard of weights and measures.

(11) To declare war, grant letters of marque and reprisal and make rules concerning captures on land and water.

(12) To raise and *support* armies, but no appropriation of money to that use shall be for a longer term than two years.

(13) To provide and *maintain* a navy.

(14) To make rules for the government and regulation of the land and naval forces.

(15) To provide for calling forth of the militia to execute the laws of the Union, suppress insurrections and repel invasions.

(16) To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

(18) To make all *laws* which shall be *necessary* and proper for carrying into execution the foregoing powers, and all other powers vested by the Constitution in the Government of the United States, or in any Department or officer thereof."

None of the slave grants were restrictions on the sovereignty of the United States. On the contrary, as Kellogg interjected, they proved that the Government of the United States, in waging war, was as sovereign as the King of Dahomey, who made shells on the seashore legal tenders.

"If a certain means to the exercise of any of the powers expressly given by the Constitution to the Government of the Union be an appropriate measure, not prohibited by the Constitution, the degree of its necessity is a question of *legislative discretion*, not of judicial cognizance."

Spaulding quoted on his side Chief Justice Marshall, Alexander Hamilton, Chancellor Kent, the Federalists, and about every legal and constitutional authority from the time

of the Fathers down, and quoted from Chief Justice Marshall as his main premise :

"Let the end be legitimate, let it be within the scope of the Constitution, and (then) all means which are appropriate, which are plainly adapted to that end, which are not prohibited but consistent with the letter and spirit of the constitution, are constitutional" (*McCullough vs. Maryland*, 5 Wheat. 319-420).*

This was Marshall's premise for upholding the constitutionality of a National Bank chartered by Congress, it being conceded that chartering a National Bank was not one of the powers expressly delegated to Congress by the Constitution. The opposition said Spaulding made a use of this language that Marshall never intended it to be put to. If so, Marshall was not the great clear-headed jurist his biographers claim for him.

Spaulding concluded :

"The assessed value of the property, real and personal, of the United States is \$12,000,000,000 but its real value is \$16,000,000,000. That would be enough to more than liquidate all the obligations of the Government, provided the war was economically, honestly and vigorously prosecuted.

"A suspension of specie payment is greatly to be deplored, but it is not a fatal step in an exigency like the present. The British Government and the Bank of England remained under suspension from 1797 to 1821, a period of twenty-five years. During this time England successfully resisted the imperial power of the Emperor Napoleon and preserved her own imperilled existence, and the people of Great Britain advanced in wealth, population and resources. Gold is not as valuable as the productions of the farmer and mechanic, for it is not as indispensable as are food and raiment. Our army and navy must have what is far more valuable to them than gold and silver. They must have food, clothing, and the material of war. Treasury notes issued by the Government, on the faith of the whole people, will purchase these indispensable articles, and the war can be prosecuted until we can enforce obedience to the Constitution and laws, and an honorable peace be thereby

* Post, 203.

secured. This being accomplished, I will be among the first to advocate a speedy return to specie payments, and all measures that are calculated to preserve the honor and dignity of the Government in time of peace, and which I regret are not practicable in the prosecution of this war."

February 5, 1862, the associated Eastern banks defaulted on the third installment of their contract to furnish the Government \$50,000,000 in coin, and the next day the Spaulding Bill passed the House.

In the Senate there was another great debate. The bill was amended so as to provide that the notes should be a legal tender for all debts, except interest on Government bonds and duties on imports. Mr. Spaulding and Thaddeus Stevens objected to this most vigorously, claiming it was unfair to the soldier element, who were just as much creditors of the Government as were the bondholders. The Boards of Trade of Boston, New York, Philadelphia, Cincinnati, Louisville, Chicago and Milwaukee approved the provisions of the bill and urged its passage as originally drawn. Then, as Stevens put it, "A doleful sound came up from the caverns of the bullion brokers and from the saloons of the associated banks."

Stevens summed up his objections as follows:

"The Senate amendment now creates money, and by its very terms declares it a depreciated currency. It makes two classes of money—one for the banks and bankers and another for the people. It is pernicious."

There was a Committee Conference and then a disagreement,—a deadlock. On the 16th of February there came over the wires the words, "Unconditional and immediate surrender," which as Bob Ingersoll afterwards stated it, voiced the nation's will. It was the Abolitionist platform edited by a military man. The Douglas men, Grant and Rawlins, the two Logans, General McClernand, Colonels Bill Morrison, Jesse Phillips, T. Lyle Dickey, Robert G. Ingersoll and others, leading some

thirty Illinois regiments, had stormed the breastworks at Fort Donelson and captured 15,000 prisoners.

Senator Chandler, who was always a "sound money" man, said: "All you need to wind up the war in sixty days is its vigorous prosecution." He urged passing the bill but instead of giving the Secretary of the Treasury five years within which to take up the "legal tenders" he proposed to limit the period to three years.

The conferees agreed on their report—\$150,000,000 of Treasury notes to be legal tender for all debts except interest on the public debt and duties at the custom houses. Both houses ratified this report and on the 25th of February, 1862, President Lincoln signed the bill.*

Before going into the details† as to the greenbacks, we will tell what Donelson did to the Confederacy.

* Post, 190.

† Post, Chapter Xv

CHAPTER XII

THE FALL OF FORT DONELSON AND THE RESULTS

DEMORALIZATION OF DAVIS AND THE CONFEDERACY AFTER BUCKNER'S SURRENDER—LINCOLN AND HALLECK FAIL TO SEE THE LOGIC OF EVENTS—GRANT SUSPENDED FROM COMMAND—BITTER FEELING IN THE SOUTH AGAINST PRESIDENT DAVIS AND HIS GENERALS—GENERAL FLOYD RELIEVED BY DAVIS—DAVIS' POLICY THAT OF THE MILITARY DICTATOR—LINCOLN'S CONTROVERSY WITH CONGRESS OVER SUSPENSION OF HABEAS CORPUS WRITS—DAVIS OBTAINS SPECIAL AUTHORITY FROM CONFEDERATE CONGRESS—MARTIAL LAW DECLARED IN RICHMOND AND ATLANTA—THE DRAFT EXTENDED IN THE SOUTH—ALEXANDER H. STEVENS OPPOSES IT—FAILURE OF THE DRAFT—VOLUNTEERS SUPERIOR TO CONSCRIPTS—THE MILLIGAN CASE IN INDIANA—WAR DICTATORSHIP.

ACCORDING to the Rebellion records, never were Jefferson Davis and the Confederacy more demoralized than at the period just following Buckner's surrender at Fort Donelson, in February, 1862. The Douglas men in the armies of the West expected to be led at once to the Gulf,* which they said they could reach in ninety days and there bring about the end of the war.

But President Lincoln and his General-in-Chief, William Halleck, one of the stupidest men ever in high position, did not see the logic of events. Instead of commending General Grant for capturing Fort Donelson, he was practically suspended, and they set out to investigate his "drinking."

* Ante, 134.

As "unconditional and immediate surrender" passed the bill or gave us the money that won the Civil War,* it was equally potential in the Confederacy. Immediately following Buckner's surrender, Confederate treasury notes went down thirty points. Before that disaster, as Albert Sidney Johnston characterized it, they had been equal in value to United States Treasury notes, selling at a discount of only twenty points. The money power of Europe took notice and began to "hedge," and Confederate bonds started on the toboggan.

More important than all, it disrupted the Confederate fiscal or revenue system. The fall of Fort Donelson made it impossible to collect the direct tax of \$25,000,000 which the Confederate Secretary of the Treasury, Meminger, had urged as necessary to support the Confederate inflation and the interest on its bonds. Of this sum only \$18,000,000 was actually realized, and that, too, in depreciated Confederate notes in which the States insisted on paying their shares or quotas. Meminger estimated, August 19, 1861, that the tangible property of the Confederacy,—slaves, lands and bank stocks,—was worth \$5,600,000,000. When the assessment was laid, practically all of Tennessee was excluded, and the assessors were only able to return a total of \$4,220,750,000. The decrease was almost entirely in slave values.

Even in South Carolina the market value of all slaves declined, especially for the able bodied males, until then the most valuable, because of the incentive to run away and the possibility of abolition by one government or conscription by the other. The Confederate Congress was slow in adopting it, although Major General Patrick R. Cleburn from the trenches put it up to the Confederate dictator that the only hope for their independence was to conscript and arm the slave, with freedom and citizenship assured him. Upon which General Grant's legal adviser, that old line Douglas Democrat we have heretofore quoted and described, remarked—"Thus before

* Ante, 1.

the conflict ceased, they stood elevated to the dignity of defenders of the flag they were under, whether national or rebel." That, which was the subject race under the law, was the equal of other races. Certainly life, liberty and the pursuit of happiness, as Jefferson wrote it, should be the lot of freed men, *if not greater privileges.*

When these words were uttered, the Fourteenth amendment had not yet been ratified by a single State and the Fifteenth or the suffrage amendment even proposed. It was Rawlins who swung Grant to the support of the latter.

The direct tax failing the Confederate government was then forced to resort to "the tax in kind," which was not always levied with an even hand, and to inflation, that is, more Treasury notes, which depreciated as the Continental notes of the Revolution did.*

The Confederate banker, as is almost always the case, stayed with the dictator. Trust funds of estates and charitable institutions went into Confederate bonds, as well as bank surpluses. The result was that at the surrender every bank in the Confederacy, except the Citizens Bank of New Orleans, closed its doors.

The Missouri Constitutional Convention, which had been marking time since March 22, 1861, when it had adjourned to see which way the cat would jump, re-convened June 2, 1862, and was met by a resolution from Judge Breckenridge, a slaveholder, for the abolition of slavery,—as an economic† not a political measure. "The war for the preservation of African slavery had destroyed it." Already six thousand active young negroes had "sloped" to Kansas alone, and fourteen thousand to other states, leaving the old and infirm and the children a charge on their owners. The only way to secure farm laborers was to give them their freedom, argued the Judge. There was no time to wait for compensation through the slow process of law. The increased value of the land through cultivation

* Ante, 16.

† Post, 178.

would more than recoup the loss of the value of the slaves, although they had numbered 115,000 when the first shot was fired at Sumter, of a total value of about \$110,000,000. Now they were a liability.

"Unconditional and immediate surrender" became the English abolitionists' platform—formulated by a sweet-faced English Quakeress as "unconditional and immediate abolition." It changed public opinion in England and consequently the attitude of the English government.

After General Floyd's desertion, the President of the Confederacy was so bitterly assailed for entrusting any command to him that Floyd, then in command of Johnston's rear guard on the retreat from Nashville to Murfreesboro, was, on President Davis' own order, relieved from further service in the field, and he returned home to Virginia to die.

If, as Grant says, politics gave Floyd his command, General Albert Sidney Johnson, the commander of the district and Floyd's superior, ought to have been in Fort Donelson with him. A defaulter under indictment in Washington, Grant says he figured Floyd could not "stand the gaff" and that is why he called on him to surrender, in words that anticipated the emancipation proclamation by six months.* On all the essential questions of administration, whether in the field or in the executive office, Grant was sound. And as we progress it will develop that he realized that a general must play politics.

General Grant knew that those 113,000 muskets, which Floyd took so much credit for transferring to Southern arsenals, were worthless, just as Jefferson Davis says they were. Current history of the times proves this.† And so it

* Ante, 116.

† Dispatch to the "Chicago Tribune," May 2, 1861:

"CAIRO.—Another full regiment from Camp Yates at Springfield has reached Cairo. Passengers from below continue to report the assembling of troops at Memphis, but it is said they are short of arms."

Dispatch to the "Chicago Tribune," June 27, 1861:

"WASHINGTON.—A man just returned from a secret service tour of the south says the strength of the rebel forces is overrated, and that their condition is wretched. He describes the larger portion as lousy, ragged, ill fed, indifferently armed, and without any apparent discipline. He laughs at the fears of alarmists here of an attack by Gen. Beauregard."

was that Grant was for boring right in before the Confederates were properly armed,—as they subsequently became after running the blockade.

Before Fort Donelson had surrendered, on February 11, General Johnston began to withdraw from Bowling Green. When he started, he only had five hundred men in the hospital. When he reached Nashville, on February 17, five thousand more out of his fourteen thousand men required the care of the medical officers. But he did not stop at Nashville. He retreated on to Decatur, south of the Tennessee River, and never would have got that far,—to come back and form his junction with Beauregard at Corinth,—had Grant been left alone. As Jefferson Davis says:

“Never could that junction have been effected if the organized armies by which he, Johnston, was threatened had been guided by a capacity equal to his own.”

But as we have already stated, Lincoln and his General-in-Chief, William Halleck, had suspended Grant who had proposed to do what Jefferson Davis said should have been done.† They did not see the logic of the event, and evidently thought Grant should have been on the drill-ground with McClellan when he was capturing 15,000 troops entrenched behind breast-works.

All the historians and war correspondents to the contrary notwithstanding, no sooner was the silent warrior of the North released from arrest than he stepped in close, with volunteers almost exclusively, south of the Tennessee River, and at Shiloh delivered a blow right over the Confederate heart from which it never recovered. But again he was relieved, and there were renewed charges of “drinking,” which were subsequently disproved to Mr. Lincoln’s satisfaction.

From the sound of the first gun at Pittsburgh Landing, which General Buell heard in the early morning, he remained at Savannah until 2 P. M., listening to the roar before he

* “Rise and Fall of the Confederacy,” Vol. II, p. 40.

† Post, 183.

started a single soldier for the field. In Napoleon's army, Buell would have been shot on his own statement instead of being given credit for saving Grant's army and for the victory. The regular army officers who had forced Grant out of the army were determined he should not come back. With such odds against him, no man ever showed more moral courage than did Ulysses S. Grant.

But one thing must be said of President Lincoln, and that is, he never posed as a military man.

Following the fall of Fort Donelson, there was not only despair in the city of Richmond, the Confederate Capital, but on the ground in Kentucky and right at Bowling Green, the bitterest criticism was leveled at the Confederate chieftain and his representative, General Albert Sidney Johnston, late a brigadier-general in the army of the United States.

Governor Isham G. Harris of Tennessee mounted his horse and rode the streets of Nashville proclaiming, "The Yankees are coming!" Old men, women and children deserted their homes and fled for their lives, soon to return when they learned that Grant was only after the man who had a gun in his hands.

Floyd's desertion at Donelson brought home to the high-minded Virginians the charge that he had been an embezzler* of trust funds in the Department of the Interior, and, as Senator Chandler had asserted on the 3rd of March, 1861, would never come back to Washington to face these charges.† The comment was commonly made that Jefferson Davis must have known the real facts of Floyd's resignation from Buchanan's cabinet.

Buchanan said that Floyd did not become a secessionist until he, President Buchanan, on the 11th of December, 1860, asked for his resignation as Secretary of War, because he was found to be implicated in the frauds in the Interior Department. In the campaign of 1860 Floyd had made Union speeches in

* Ante, 116.

† Ante, 116.

Virginia. Instead of resigning, Floyd presented an order for Buchanan's sanction in which Floyd as Secretary of War was authorized to order Major Anderson out of the forts in Charleston Harbor. Buchanan refused to approve this order, and Floyd then resigned, and as a Simon pure secessionist he immediately "began to crowd 'Old Jeff' for the leadership." He became so strong that the President of the Provisional Confederate States of America was forced to give him a command in the army, a position for which General Grant says he was utterly unfit.*

In Richmond, at the election of 1860, the Bell and Everett, or Union ticket received 2402 votes and Douglas 753, while Breckenridge, representing the Secessionist party, had only 1167 votes. In Richmond County, outside of Richmond, the Union and Douglas' men outnumbered the Breckenridge men two to one. As late as April 4, 1861, the Virginia Constitutional Convention, by the decisive vote of 89 to 45, had refused to pass an ordinance of secession, and on the 17th, four days after Sumter surrendered and six days after Roger A. Pryor's hysterical speech, the vote was for 88 to 55 against secession.

Better, the dissatisfied people argued, that they go back to the Union and even accept compensation for their slaves. The Provisional Government of the Confederate States of America was to end February 22, 1862.

The editor of the "Richmond Examiner" later said of these times:

"No one who lived in Richmond can ever forget those gloomy, miserable days. In the midst of them was to occur the ceremony of the inauguration of the permanent Government of the Confederate States. . . . The ceremony of the second inauguration of President Davis was one of deep interest to the public, for it was supposed that he might use the occasion to develop a new policy and to reanimate the people. The 22nd of February, the

* Ante, 116.

day appointed for the inauguration, was memorable for its gloom."

May 6, 1861, the "Examiner" in a leading editorial sang a different song.*

President Davis' inaugural address did not "reanimate the people." To the popular complaint of inefficiency in all departments of the government, the President simply replied that they had all done all that human power and foresight could enable them to accomplish.

"It was expected," said the writer above quoted, "that Mr. Davis would give them a new cabinet." Instead, he assumed a dictatorship.†

In handling the crumbling Confederacy Jefferson Davis proved that, on the war side, he was second to none. He far surpassed Lincoln as a commander-in-chief of the army and navy, and he might eventually have succeeded in the struggle had not Lincoln finally been brought to see his own limitations, and induced to put Grant in supreme command of the Northern armies with a pledge not to ask him a question until the job was done.†

As a leader of public opinion, neither Abraham Lincoln nor Woodrow Wilson was superior to Jefferson Davis, for as an orator "Old Jeff" could whip his congress and his people into a frenzy that took them "into the last ditch."

Had positions been reversed, Davis would probably have suppressed the rebellion inside of a year. In waging war, he not only ignored or dispensed with every right reserved to the States or the people, but he set a new world precedent for military despotism. Woodrow Wilson is authority for this

* The "Chicago Tribune" of May 6, 1926, contains the following quotation from the "Examiner" of May 6, 1861:

"RICHMOND.—(From the 'Richmond Examiner.')

—The north has no officers to command or drill the cowardly motley crew of starving foreigners and operatives that it proposes to send south to fill ditches and as food for cannon. The regular troops of the Union since the resignation of the southerners are deficient in officers, and who are to drill the 75,000 militia sheep? If we except Benedict Arnold, there never was a northern man who was fitted to command, if you would give him a chance to run. With ninety-nine northern men in a hundred, on all occasions, duty, honor, patriotism has ever been considered, and will ever be considered, a mere matter of profit and loss. They never did fight, and never will fight, except for pay, for pillage and for plunder."

† Post, 264. Chapter XIII, p. 172.

statement, and I mention it, not by way of criticism, but as one of the ultimate facts. But aside from Mr. Wilson's statement, the record proves this fact. President Wilson, the Kaiser, the preachers, and all the regular army men conducted the World War on Jefferson Davis' plan. That it was efficient, must be admitted, but that the accepted American way of organizing is a better way to wage a war, I am content to rest on the testimony of Alexander H. Stephens and Ulysses S. Grant.

President Lincoln was then still in a controversy with Congress over the suspension of the writ of habeas corpus in support of arbitrary arrests, all over the loyal States, of sympathizers with secession and rebellion or of those who argued against the further prosecution of the war. One of the questions was as to whether the President or the Congress had the right to declare martial law and suspend the writ of habeas corpus, and it was afterwards held that the President had not this power.* The Constitution of both the Union and the Confederate states read:

"The privilege of the writ of habeas corpus shall not be suspended unless when, in case of rebellion or invasion, the public safety may require it."

Avoiding the controversy that President Lincoln had fallen into, the Confederate Congress, at President Davis' request, on the 27th day of February, 1862, authorized the President of the Confederate States to declare martial law, suspend the writ of habeas corpus, "and arrest and hold, without warrant, during the present invasion, all persons guilty of treason, and all other direct acts and resistance, of all spies, and especially of all persons holding correspondence or intercourse with the enemy, without necessity and without the permission of the Confederate States."

Under the powers thus granted him, President Davis, on the 2d of March, 1862, declared martial law in Richmond and in the surrounding country within ten miles of the city, suspended

* Post, 221-3.

the writ of habeas corpus, superseded the civil authorities, with the exception of the mayor, by military authority, and closed all distilleries and liquor stores. The same course was taken at Charleston, Memphis and Atlanta. At Atlanta, martial law was proclaimed by General Bragg, the military commander of the district, under authority of the Confederate President. Vice-President Stephens, in a letter to James H. Calhoun, the Civil Governor of Atlanta appointed by Bragg, said:

"Your appointment, in my opinion, is a nullity. Under General Bragg's appointment, you can rightfully exercise no more power than if the appointment had been made by a street walker."

Meantime, the Confederate chieftain had worked further back with the draft, April 16, 1862, extending it until finally it reached "from the cradle to the grave." It contained many exemptions—every overseer, every owner of twenty or more slaves, etc.,—but it did not exempt the common people, and there arose the old cry of "the rich man's war and the poor man's fight."

March 3, 1863, the first Northern draft was authorized. It was not pushed as far as it was in the South, but the parallel is striking. In arguing against the Southern draft, Stephens, construing Sections 12, 15 and 16 of the Confederate Constitution, proved himself one of the best constitutionalists America ever produced. That he got the better of Jefferson Davis is attested by the fact that it was said that Alexander Stephens' logic was more powerful in weakening the dictatorship of the Confederacy, than were Abraham Lincoln's armies.

James L. Pettigrew, a States Rights lawyer of the old Calhoun school and eminent in the profession, in the District Court of the Confederate States of America, before Judge McGrath sitting in Charleston, said, in resisting the war legislation of the Confederacy: "All that can be said in favor of its end and object can be said in favor of the Star Chamber and the Spanish Inquisition." But Judge McGrath went along better than did some of President Lincoln's judicial appointees,*

for he sustained everything that the Confederate Government advocated as a war measure.

Stephens says that of the 200,000 men the various drafts yielded the Confederacy, all but 10,000 deserted, and he points out that the 400,000 fighting men the Confederacy finally developed—and it must be conceded that they were as good soldiers as any that ever lived—were all volunteers. Grant did better in the West with volunteers than he afterwards did in the East with conscripts. In the face of Lee and Johnson's impending surrenders, Jefferson Davis' plan to make a stand farther south with the men who had deserted from the Army of Northern Virginia was part of what "Bob" Ingersoll said was the insanity of secession.

"Never did a conscripted army win a people its independence," declared Stephens. "Sometimes they enable tyrants to trample on a people's liberty. Instead of the draft, the war should have been ended." That his logic was sound, is shown by the fact that in the face of our draft in the World War, our military experts as well as the War Department have come to the conclusion that the state militia, the "soldiers of the Constitution," are the men on whom military dictators must rely in times of emergency.

No better exposition of the rights of American citizens, even in time of war, was ever made than that of Stephens in resisting the arbitrary powers which Jefferson Davis and the Confederate Congress assumed.

This is not a criticism of Davis. He was one of the great but misguided Americans. It is a criticism purely on the military side. As a civilian Stephens stands right up at the top with the best. Inside the Confederacy he vindicated the American system.

Neither Congress nor the President had authority, he argued, under the foregoing constitutional provision, which we have quoted and which was identical in both the United States and

* Post, 169.

the Confederate constitutions, to declare martial law and suspend the writ of habeas corpus, with the civil courts functioning as they were in Richmond when President Davis declared martial law.*

As early as December 12, 1861, Senator Lyman H. Trumbull,† of Illinois, on the floor of the Senate questioned the right of Secretary of State Seward, even with President Lincoln's consent, to suspend the writ of habeas corpus and make arrests all over the North of men not actually engaged in rebellion. "Where is your law?" asked the man Lincoln had made United States Senator in 1855. If additional legislation was necessary to put down treason or punish rebel sympathizers in Connecticut, or in any other loyal State, he, Trumbull, was ready to give it, but he was not willing to sanction lawlessness on the part of public officials on the plea of necessity. If people were to be arrested and imprisoned indefinitely, at the click of the telegraph, without charges against them, without examination, without an opportunity to reply, in localities where the courts were open, far from the theatres of war, *such acts were the very essence of despotism.*

Later he stated, of the American position, "I am engaged, and the people whom I represent are engaged, in the maintenance of the constitution and the rights of the citizens under it. We are fighting for the government as our fathers made it. *The constitution is broad enough to put down this rebellion without any violation of it.*"

After Stanton came, this arbitrary power was transferred to him and he was remorseless. But Trumbull pressed the contest, and his position was sustained at the polls in November, 1862, in Illinois, Indiana, Ohio, Pennsylvania, New York, New Jersey and Wisconsin.

The policy abandoned, Trumbull's legislation passed and also an indemnity act including everybody, from President Lincoln down to the humblest citizen.

* Post, 169.

† Post, 221.

The opinions of Alexander H. Stephens, the Vice-President of the Confederate States of America, and of Lyman Trumbull, United States Senator from Illinois, in the two preceding pages, were sustained in the Supreme Court of the United States, by Justice David Davis, one of Lincoln's appointees, in an opinion delivered December 17, 1866,* in the case of *Lambdin P. Milligan*, a citizen of Indiana, who had never been in the military service of the United States and never in the service of the Confederate States, but who had resisted the draft in Huntington County, Indiana.

October 5, 1864, Mr. Milligan was arrested at his home by order of General Alvin P. Hovey, commanding the military district of Indiana.† October 21, he was put on trial before a military commission at Indianapolis, by order of General Hovey, found guilty, and sentenced to be hanged Friday, May 19, 1865. This sentence was approved by President Johnson, and pending its execution, Milligan was brought before the Circuit Court for the District of Indiana, presided over by Justice David Davis and David McDonald, the District Judge, by a writ of habeas corpus.

In his exposition of the case in the Supreme Court of the United States, there is a ring of conviction, a knowledge of fundamentals, and a directness of expression in Justice Davis' opinion that went through the dissent of Chief Justice Chase, who, although agreeing that Milligan's conviction was illegal, insisted that the time might come when the dictatorship of war, as the Union and Confederate Chieftains proclaimed it, might be necessary. Justice Davis disposed of this:

"No, time has proved the discernment of our ancestors, for even these provisions, expressed in such plain English words that it would seem the ingenuity of man could not evade them, are now, after the lapse of more than seventy years, sought to be avoided. . . . The Constitution of the United States is a law for rulers and people, equally in war and peace, and covers with its shield of

* 4 Wallace 2.

† Post, 223.

protection all classes of men at all times, and under all circumstances."

During the World War, the prosecutions for resisting the enforcement of the war, as it was charged, lay in the Civil Courts, but their prosecutions were conducted along the lines and in the spirit that Jefferson Davis used to sustain his dictatorship.* The McAdoos in Tennessee were merciless in enforcing it during the Civil War. The assumption of dictatorship cut President Lincoln off from reaching the people in the heart of the Confederacy. He said, on March 10, 1862, to the representatives of the Border States, that more would be accomplished towards shortening the war by putting up to the people compensation for slaves in the Border States than could be hoped from the greatest victory achieved by the Union armies. That Lincoln was mistaken in this, is manifest from what we have quoted from him, and from the correspondence between the President of the Confederate States of America and General Albert Sidney Johnston, in command of the District of Tennessee and Kentucky following the surrender at Fort Donelson.

The mental deficiencies of the conscripted man in the World War is conclusive that the selective service act is not the way for the United States to make war. The system does not develop a single military hero, there is a feeling of resentment against all the higher officers, and naturally, the pacifist sentiment is strong. That the selective service act did not get the men it is claimed it did, is demonstrated by General Bullard's statement that many of them had to be shot in the back, but, according to his own statement, the trouble was at the top, in the French highest commanders. He even affirms that General Pershing told him Bullard ought to have disobeyed an order of his superior French General, which required a small detachment of Americans to remain across a river to be

* Post, 268-72.

annihilated. Afterwards the Frenchman acknowledged his error, but the Americans were then all dead. And yet the militarist marvels at the spread of pacifism.

CHAPTER XIII

GRANT REFUSES TO RUN AGAINST LINCOLN IN 1864

GRANT'S "PADUCAH PROCLAMATION"—KENTUCKY ESSENTIAL TO SUCCESS OF THE CONFEDERACY—DAVIS OPPOSED TO NEUTRALITY IN THAT STATE—GRANT'S MOVEMENT ON PADUCAH SAVES KENTUCKY TO THE UNION—GRANT URGED FOR THE PRESIDENCY BY LEADING NEWSPAPERS—GRANT LEARNS OF LINCOLN'S ANXIETY TO BE RENOMINATED AND REFUSES TO BE A CANDIDATE—THE POWER OF POLITICS IN MILITARY AFFAIRS—POLITICAL EFFECT OF GRANT'S "UNCONDITIONAL AND IMMEDIATE SURRENDER."

EVEN after Vicksburg, President Lincoln could not see that Grant was the man for supreme command,* although he acknowledged that Grant had then been right and he wrong. What Grant and his army wanted to do, after Vicksburg, was to march directly on to Mobile, but they were not allowed to do so. It was eighteen months after Donelson before Mr. Lincoln saw the politics and the humor of the situation.

Of Grant's proclamation, "To the Citizens of Paducah," Lincoln said, "The man who can write like that is fitted to command in the West."

As not a single history or biography gives even the substance of this, one of the best State papers ever penned, we give it here in full:

"September 6, 1861

"TO THE CITIZENS OF PADUCAH:

"I have come among you not as an enemy, but as your friend and fellow citizen; not to injure or annoy you, but to respect the

* Post, 183.

rights and defend and enforce the rights of all loyal citizens. An enemy in rebellion against our common government has taken possession of and planted its guns upon the soil of Kentucky and fired upon our flag. Hickman and Columbus are in his hands; he is moving upon this city. I am here to defend you against this enemy, and to assert and maintain the sovereignty of your government and mine. I have nothing to do with opinions. I deal only with armed rebellion and its aiders and abettors. You can pursue your usual avocations without fear or hindrance. The strong arm of the government is here to protect its friends and to punish only its enemies. Whenever it is manifest that you are able to defend yourselves, to maintain the authority of your government and protect the rights of all its loyal citizens, I shall withdraw the forces under my command from your city."

On that Paducah expedition was Jesse J. Phillips, Major of the 9th Illinois, one of the two infantry regiments—the other was the 12th Illinois—which, with a four-gun battery, "a totally inadequate force," were lead against the reports that the Confederates in "overwhelming" numbers were up the Tennessee and Cumberland rivers as well as at Columbus, Hickman and Bowling Green. These reports, however, Grant did not believe.

In the '90's, Major Jesse J. Phillips was a member of the Supreme Court of Illinois. After the court finished up the calendar for the day—oral arguments began then at 9 A. M.—Judge Phillips often came down to the Leland Hotel in Springfield, to the bar if you please, and over the toddies, while the rest of us listened, told the soldier-lawyers—one especially, Colonel John S. Cooper, who had helped break up Oberlin College in April, 1861, by joining the 7th Ohio—about those early days which are not much mentioned in the histories. Judge Phillips died a Douglas Democrat. He was one of those who had responded to Douglas' call of April 16, 1861, when, at Hillsboro, Illinois, he helped organize and became the captain of a company which ten days later was mustered

in at Springfield, as part of the 9th Illinois. It was the second Illinois regiment accepted by the United States.* At Cairo, at its expiration of service of one hundred days, it served as volunteers pure and simple for thirty days and then re-enlisted for three years with Phillips as its lieutenant-colonel. He came out a brigadier-general, with a wound from which he suffered to his death.

Judge Phillips was a man of honor, and so were the lawyers with whom he visited. All were above even mentioning any subject that would have any bearing on the question before the court. Judge Phillips felt called on to defend John R. Tanner, who, as a Republican governor of Illinois, was then under a good deal of criticism. "John Tanner is as good an old-fashioned governor as we ever had." Referring to 1858, when the Republicans, including Mr. Lincoln, were very narrow in not letting Douglas go back to the Senate without opposition, as well as Cook and Harris who had beat the Lecompton bill to the House, Judge Phillips said,† "Harris' speech against the Lecompton bill was one of the best ever made in Congress." To the younger lawyers he would say, "Boys, never fear to go to trial. Often it is only a shell on the other side."

It was on the night of the 5th of September that Grant learned from a spy that the rebels "proposed to occupy Paducah." On the 6th he was on his way there, sending word to General Fremont at St. Louis, his immediate superior, that he had gone.

As before stated, Kentucky was essential to the success of the Confederacy. It was the Douglas propaganda that helped hold her to the Union. Consequently it was that Jefferson Davis was opposed even to neutrality in his native State. August 4, 1861, Kentucky elected a Union or neutral, but a pro-slavery legislature. This legislature met September 1, and declared against the confiscation acts of the Confederate

* Ante, 129.

† Ante, 86. Post, 132, note.

Congress, the acts which confiscated the property of every one, even a slaveholder's, who held opinions contrary to secession. This declaration was met by the seizing of Columbus, Kentucky, September 4, by a late Bishop of the Episcopal Church with twenty thousand Confederate soldiers. At the same time, General Buckner with five thousand ex-Kentucky national guardsmen from Camp Boone, Tennessee, seized Bowling Green.

General Grant not only beat the Bishop-General to Paducah on the 6th, but was so much more facile with the pen than he that the Kentucky legislature, after reading the proclamation of the soldier and that of the churchman, requested the churchman and his army to retire from the State. But instead of being put in command in the West, the record is, as we lawyers say, that General Grant got a reprimand for sending a copy of that proclamation to the Kentucky legislature.

It was politics that put John B. Floyd in command at Fort Donelson. Woodrow Wilson says it was politics at the last minute that stopped General Wood on his way to France. That Grant was ignorant of the political power of a successful general, no one can gainsay who will read what he says in his Memoirs about the efforts of the Polk administration to kill off General Zachariah Taylor as a presidential quantity by taking away his regulars and leaving him only volunteers. Instead of killing off "Old Zach," Polk made a presidential quantity not only out of Taylor but of Scott also. Promises made to Scott were not kept. With volunteers Taylor won the battle of Buena Vista and with an inadequate force of regulars—much less than promised—Scott captured the City of Mexico.

It seems conclusive that by December, 1863, Grant fully realized what an aid it would be to him to have the administration behind him.

A political story of this period, from Chattanooga, is illuminating. It is from the pen of Ida Tarbell, although Miss

Tarbell does not tell it all. Mr. Lincoln "was indifferent about his renomination, but was at least considering it as a possibility," writes Miss Tarbell. There was much opposition to Lincoln among the leaders like Senators Wade and Chandler, while many prominent newspapers, like the "New York Herald," were pressing Grant for the presidency. The intellectuals, among whom Lyman Trumbull was classed, were with the "men of iron" in opposing Lincoln. He only saved himself by coming to their way of prosecuting the war.

Leonard Swett, one of Lincoln's confidants, is on record in his own handwriting as to this second nomination. "He was much more eager for it than for the first, and such was known to his intimate friends to be the fact, though his manner to the public would indicate that he was indifferent to a second nomination."

Senator Lyman Trumbull, the anti-slavery Democrat, to whom we have shown that Lincoln transferred his votes in the Illinois legislature in January, 1855, in order to defeat the election of a Douglas "Squatter Sovereignty" man, had in the meantime become a Republican and been re-elected as such, in January, 1861. Upon the organization of the Senate by the Republicans at the Special Session of that body, March 4, 1861, Trumbull had been made chairman of its most important committee, the Judiciary, for in this committee, with Trumbull at its head, was vested the power of re-writing the organic law of the land. That Trumbull had the nerve and force to go down the line, is attested by the fact that he was the first of the seven Republican senators to file a written opinion against the impeachment of President Andrew Johnson.*

No personal or political consideration influenced his judgment. Andrew Johnson, as President, had acted almost in bad faith towards Trumbull, Chairman of the Judiciary Committee. He had vetoed as unconstitutional bills that Trumbull had drawn and understood would have the President's approval. It was these vetoes that had set Wade and Chandler against

* Ante, 71.

Johnson, for these bills of Trumbull's—one was the Civil Rights Bill—were constitutional. But Trumbull would not use his political power to punish a political enemy. His opinion, which saved Johnson from impeachment, that has since had the approval of posterity, was advanced in the face of threats of political death. Joseph Medill says it lost Trumbull the presidency. But he gladly did his duty as he saw it. He had opposed many of Lincoln's war measures as unconstitutional, such as suspending the traitorous "Chicago Times." He was for a free press and free speech, and he exercised the latter. He opposed Lincoln's renomination because he was "without executive ability. As president during the great civil war he lacked executive ability and that resolution and prompt action essential to bringing it to a speedy and successful close."

Writing long after the event, Trumbull says: "Some of Mr. Lincoln's admirers, instead of regarding his want of system, hesitancy and irresolution as defects in his character, seek to make them the subject of praise, as in the end the rebellion was suppressed, and slavery abolished during his administration, ignoring the fact that a man of more positive character, prompt and systematic action, might have accomplished the result in half the time, and with half the loss of blood and treasure."

January 10, 1864, in reporting the Thirteenth Amendment* as he had re-drafted it,—copied in part out of the ordinance for the organization of the Northwest Territory,—the chairman of the Judiciary Committee thus criticised the President of the United States:

"I trust that within a year, in less than it will take to make this constitutional amendment effective, our armies will have put the rebel armies to flight. I think it ought to have been done long ago.† Hundreds of millions of dollars and a hundred thousand lives would have been saved had the power of the republic been con-

* "Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction. Congress shall have power to enforce this article by appropriate legislation."

† Post, 183.

centrated under one mind and hurled in masses upon the rebel armies. . . . But instead of looking back and sorrowing over the errors of the past, let us remember them only for the lessons they teach for the future. . . . We have at last placed at the head of our armies a man in whom the country has confidence, a man who has won victories wherever he has been, and I trust that his mind is to be permitted uninterfered with, to unite our forces, never before so formidable as today, in one or two great armies, and hurl them upon the rebel force."

The best speeches made in either branch of congress in support of the resolution for the submission of the Thirteenth Amendment were made by Senators Reverdy Johnson and John B. Henderson, both from slave States, Maryland and Missouri, respectively. On economic grounds* Senator Henderson condemned slavery and criticised the administration for not boring into the heart of the Confederacy instead of trying to surround it. His speech pointed to Grant as leader. Senator Johnson took, as the old lawyers say, high ground. Slavery was a sin. He read from one of his speeches in the Senate in 1847 in which he said slavery was a sin and had been so regarded by the fathers who had put the government of the United States in motion under the firm belief that before the second generation had passed the sin would have been removed in a peaceable and statesmanlike way. Assuming the constitutionality and validity of the Emancipation Proclamation it was wholly inadequate. It expressly held half of the slaves in bondage while the other half were still slaves inside of the Confederate lines. So nothing but an amendment to the constitution would answer the exigencies of the occasion.

In closing Senator Johnson declared that had the war powers of the nation been properly marshalled the rebellion would have long since been suppressed.† Coming from a man who, as attorney-general in Zachary Taylor's cabinet, had written the message to Congress—based on Squatter Sovereignty or the right of each State to write its fundamental laws with or

* Ante, 159.

† Post, 183.

without slavery as it chose—in urging the admission of California with a free constitution and justifying “Old Zach’s” threats to put himself at the head of the army for the suppression of Jefferson Davis’ secession movements in 1850, the Lincoln administration had to move.

Meantime the correspondence discloses that the chairman of the Judiciary Committee had been encouraging the General in the field to be a candidate against the President for re-election, and Lincoln’s friends, Governor Yates and Norman B. Judd among others, were trying to whip Trumbull into line for Lincoln’s re-nomination by suggesting loss of place, while Trumbull replied, “There is a distinct fear that he [Lincoln] is too undecided and inefficient to put down the rebellion.”

December 18, 1863, Major-General John M. Palmer, who as an anti-Kansas-Nebraska Democrat in 1855 had refused to vote for Abraham Lincoln for United States Senator, then a Republican, wrote to Senator Trumbull from Chattanooga:

“Mr. Lincoln is by far the strongest man with the army, and no combination could be made which would impair his strength with his army unless, perhaps, Grant’s candidacy would.”

Again General Palmer wrote to the Senator:

“I saw Grant yesterday and had a conversation with him. . . . He does not desire to be a candidate for the presidency; he prefers his present theatre of service to any other. . . . He has no enemies and it is very difficult to understand how he can have any. He is honest, brave, frank, and modest; is perfectly willing that his subordinates shall win all the reputation and glory possible; will help them when he can with the most unselfish earnestness. He demands no adulation. . . . I do not think he will be anybody’s candidate for the presidency this time, but after that his stock will be at a premium for anything he wants.”

J. Russell Jones, afterwards made Minister to Belgium by President Grant over Charles Sumner’s protest, also tells a different story from Miss Tarbell’s. Mr. Jones told me that Miss Tarbell did not print all that he told her about Lincoln’s

and Grant's attitudes towards the presidency in 1864. He said he told Miss Tarbell that Mr. Lincoln was very anxious and concerned about his re-nomination.

Mr. Jones was one of the "Galena Gang" and as a political appointee of Lincoln—United States Marshall—was present at the Grant-Rawlins-Washburne meeting following the firing on Fort Sumter. According to Jones it was Rawlins who got up in the meeting in obedience to Douglas' call. Others claim that credit and say Rawlins was only a volunteer. One story is that it was Rawlin's speech that convinced Grant it was his duty to offer his services to the government which had educated him. From the hesitancy of the government in accepting that offer Grant may have had misgivings that the speech of Rawlins, which all accounts agree was the speech of the occasion, contributed to remove. This speech concluded:

"I have been a Democrat all my life. I have favored every honorable compromise, but the day of compromise is past. One course is left to us, we will stand by the flag of our country and appeal to the God of Battles."

Jones was part of the Republican organization and had been elected to the Illinois legislature the November before to look after his corporate interests. He had been one of the officers of the Galena & St. Paul Steamboat Line, of which Rawlins was attorney. And at this time Mr. Jones was buying the control of the West Side Street Railway in Chicago and selling out the steamboat lines, as he saw the railroads were coming.

As part of the new venture he organized a corporation to make horseshoes and horseshoe nails. With the backing of Congressman Washburne and President Lincoln, Mr. Jones wrote the schedule of the Morrill tariff for horseshoes and horseshoe nails and paid one hundred per cent dividends until the coming of the Wilson and Gorham tariff of 1892.

Being part of the Republican organization, Jones had a hand in getting Grant into the Adjutant-General's office at Springfield and then to the command of the 20th Illinois, and as the

two rode back and forth between Springfield and Galena there were mutual confidences. After Grant went to the front, Jones became his banker, "and for every dollar he entrusted to me I turned him back five."

After the 1880 convention the relations of the two men were not so "homogeneous," as Henry Watterson would say. Practical man that he was, Jones wanted the Grant forces in the early stages to nominate one of their own men by going over to Washburne of the Galena district.

While General Grant was at Chattanooga, Mr. Jones sent an artist there to him to paint his portrait,—the best that was ever painted of him. This portrait now hangs in the G. A. R. Memorial Hall in the City of Chicago. It is a different conception from any other picture of the General.

Jones, although the confidant of Grant, was for Lincoln's renomination, he told Miss Tarbell. Quoting further what he told me:

"One day, while Grant was at Chattanooga, I cut out one of Bennett's editorials booming him for the presidency and enclosed it in a letter to General Grant, and said, 'Don't let the politicians and newspapers use you to beat Lincoln; your time is coming.'"

Promptly Grant replied from Chattanooga that the politicians and editors could not use him, and that he was for Lincoln's nomination and election, that all he wanted was to fight the war to the end.

Mr. Jones was soon summoned to Washington by Mr. Lincoln and asked as to what he knew about General Grant's attitude. "I said not a word, but I pulled out of my pocket the letter that General Grant had written me. Standing, Lincoln read the letter very carefully, placed it in one of his inside pockets, then reached down [Jones was a very small man in physique], and placing one hand on each of my shoulders, said: 'Young feller, you will never know how much good this does me'."

And it was a Douglas lawyer, Colonel T. Lyle Dickey of

Grant's staff, who suggested to Mr. Lincoln how to announce to the army and the politicians the sealing of the deal. As a practical politician or statesman, if the editors want it that way, Mr. Lincoln was one of the best. Judge Dickey submitted that the Army of the Potomac, from the commander-in-chief down to the last private, might profit by adopting, with the sanction of the president of the United States, the same brand of liquor that Grant drank. At the time of this conversation, December, 1863, Dickey was a special confidential messenger from General Grant to the president on a subject that Grant said he was afraid to write about for fear the letter would be stolen, or to put in a telegram, for he suspected the other side had our code and a spy somewhere along the line. Dickey, unlike many of the Douglas men, never became a Republican. Dying a member of the Supreme Court of Illinois, he was *per se* an advocate, and he knew what could reach "the lawyer president." Meantime Dickey had been maintaining the reputation of the Army of the Tennessee at the Willard Hotel bar. Lincoln was delighted and said, "Dickey, I am going to steal this idea from you. Never use it again and I will give it to the next delegation of preachers who come up here protesting against General Grant's drinking."*

Soon Grant was in supreme command. And it was Grant, Sherman, and Sheridan† who elected Lincoln in 1864.

* Ante, 139.

† Sheridan cleaned up Early and the Shenandoah Valley so completely that when a crow crossed it he had to carry his rations. But, writes Gil. R. Stormant, one of Sheridan's Army of the Cumberland soldiers:

"At the time of Early's raid, in 1864, when Washington came so near being captured by the Confederates, it appears that there were within fifty miles of that city four independent military departments, each dependent for instruction and orders upon the constituted authorities that were assembled around the War Department. The condition of military affairs is well described in a telegram of Charles A. Dana, assistant secretary of war, addressed to Gen. Grant. He said:

"Nothing can possibly be done here toward pursuing or cutting off the enemy, for want of a commander. Augur commands the defenses of Washington, with McCook and a lot of brigadiers under him, but he is not allowed to go outside. Wright commands his own corps; Gilmore has been assigned to the temporary command of the troops of the 19th corps in the city of Washington, or to command the 8th corps and all other troops in the middle department, leaving Gen. Lew Wallace to command the city of Baltimore alone. But there is no head to the whole and it seems indispensable that you should appoint one. Gen. Halleck will not give orders; the President will give none; and until you direct positively and explicitly, what is to be done everything will go on in the deplorable and fatal way it has gone for the past week."

"The information that Grant possessed convinced him that the four departments

Speaking of his second election, Lincoln said to Hugh McCullough, Secretary of the Treasury:

"I am here by the blunder of the Democrats. If, instead of resolving that the war was a failure, they had resolved that I was a failure,* and denounced me for not more vigorously prosecuting it, I should not have been re-elected, and I reckon you would not have been Secretary of the Treasury."

While the man who gets mixed up in the maze of the evidentiary facts will claim we are getting "far afield," we are sticking to our text in stressing the fact that General Grant was not wanting in political sense of the highest order, which after all is nothing but executive capacity, the absence of which gave us the greenbacks and the wildcat currency of today. Windjamming, whether on the stump or in the editorial department, is not statesmanship.

Mrs. Lincoln was as anxious for a second term for her husband as he was himself. Her woman's intuition, if not political ability,—which, however, she undoubtedly possessed,—recognized the man who could supplant her husband for that second term. In her woman's way she deprecated the man of blood.

"Unconditional and immediate surrender" was one of the best political slogans ever issued. From the hour it came over

must be merged into one, and that one commander should control all troops opposing any movement of the enemy toward Maryland and Pennsylvania. When convinced that this was the thing to be done, Gen. Grant met with difficulty and delay in bringing about the consolidation of these four departments, and in the selection of a commander. Several names suggested for this command for one reason and another did not meet the approval of the President. After much discussion and delay Grant sent for Sheridan and told him he was selected to take command of the troops that were to operate against Early and that he should proceed immediately to his new field of duty. Sheridan went to Washington and reported to the secretary of war and together they called on the President. During the conversation that followed the meeting Mr. Lincoln informed Sheridan that the secretary had objected to his assignment to Gen. Hunter's command as he was thought to be too young; and Mr. Lincoln added that he himself had agreed with the secretary, but had finally concluded to assent to the views of Gen. Grant and 'hope for the best.'

"In his autobiography Gen. Sheridan, speaking of this interview with President Lincoln, says: 'Mr. Stanton remained silent during these remarks, never once indicating whether he, too, had become reconciled to my selection for this command, and, although after we left the White House he conversed with me freely in regard to the campaign I was expected to make, seeking to impress on me the necessity for success from the political as well as the military point of view, and he utterly ignored the fact that he had taken any part in disapproving the recommendation of the commander in chief.'"

* Ante, 38-55, 126-32, 150, 172, 177, 178, 180-2.

the wire, says Blaine, in his "Twenty Years in Congress," Ulysses S. Grant was a presidential quantity whether he willed it or no. These four words of "the silent warrior of the North" voiced the Nation's will. They were abolition pure and simple. They put over what Generals Fremont and Hunter had failed to do, and abolitionists like Wendell Phillips, who were getting discouraged, took on new life and began pressing Lincoln to issue an emancipation proclamation which, as the foregoing shows, was perhaps unconstitutional, and as a war measure did not free a single slave inside the Confederate lines, meantime holding the slaves in the border States in bondage.

With men like Trumbull, Rawlins, T. Lyle Dickey, and Jesse Phillips as his advocates, and as a Douglas Democrat on a war platform, Grant would have beaten Lincoln at the polls. As an avowed Republican he would have beaten Lincoln in the Baltimore Convention.

CHAPTER XIV

OVERTURES TO PEACE

INFORMAL ADVANCES TO A SETTLEMENT—LIMITATIONS OF THE PRESIDENT'S POLITICAL POWER—LINCOLN REBUKED BY CONGRESS FOR HIS PLAN FOR RECONSTRUCTION—HAMPTON ROADS CONFERENCE FAILS—CONGRESS REFUSES TO ADMIT LOUISIANA—LINCOLN AND DAVIS INSTRUCT GRANT AND LEE TO ARRANGE FOR A SUSPENSION OF HOSTILITIES—GRANT AND LEE FINALLY GET TOGETHER.

THE history of the Civil War reveals the fact that both the Union and Confederate Presidents made informal though ineffectual overtures to a settlement. Francis P. Blair, President Lincoln's accredited agent to President Davis, on the 12th of January, 1865, told Davis that Lincoln "did not sympathize with the radical men who desired the devastation and subjugation of the Southern States, but that he was unable to control the extreme party, which now had great power in the Congress, and would, at the next session, have still more."

Alexander H. Stephens questioned the wisdom of President Davis' draft and suspension of the writ of Habeas Corpus, but no man assailed the Confederate chief for the assumption of "arbitrary and kingly powers" as Benjamin F. Wade did the Union chief, in opposing Lincoln's reconstruction plans.

The supreme political power under the Constitution of the United States is in the Congress as in the British system it is in Parliament. In recent years it was hard for Grover Cleveland and Woodrow Wilson to realize this. It seems even yet to be beyond the comprehension of most of our publicists. Jefferson Davis understood Lincoln's embarrassment for he

had a Congress on his own hands, under a constitution copied almost verbatim from the Constitution of the United States. But Davis' Congress contained no man who possessed the force and power he credits to Senator Zachariah Chandler.*

On the 27th of June, 1864, Congress had refused to accept Lincoln's Arkansas State government plan, based on ten per cent of the vote of 1860. In the Senate the vote was 27 to 6 against it.

Almost unanimous, writes Mr. Blaine, was the dissent in Congress against Lincoln's plan of reconstruction. In a written protest, Senator Wade and Congressman Henry Winter Davis of Maryland, respectively chairmen in the Senate and House of the Committees on the Rebellious States, advised Lincoln "to confine himself to his executive duties—obey and execute not make laws, suppress armed rebellion by arms and leave political reorganization to Congress."

The Hampton Roads Conference failed February 3, 1865, because, to Commissioner Alexander H. Stephens, President Lincoln said he could give them "no assurances as to what would be their treatment if they would lay down their arms." To Commissioner Hunter's suggestion that Charles I and the Roundheads made a deal without consulting Parliament, Lincoln replied, "All I distinctly recollect about the case of Charles the First is that he lost his head."

It was Alexander H. Stephens' opinion that the proposed negotiations should be conducted by the two Presidents alone without the intervention of commissioners. Neither executive favored this plan. And it was only on General Grant's insistence that Lincoln went to Hampton Roads. Certain it is, that Grant wanted a settlement, and would have made one had it been left to him, and certain it is, also, that Lincoln did not want the commissioners in Washington.

In the debate on the Louisiana Bill, February 25, 1865, Senator Wade said:

* Ante, 110.

"When the foundation of this government is sought to be swept away by executive assumption, it will not do to turn around to me and say, this comes from a President I helped elect. . . . If the President of the United States operating through his Major-Generals can initiate a State government, and can bring it here and force us, compel us, to receive on this floor these mere mockeries, these men of straw who represent nobody, your Republic is at an end. . . . Talk not to me of your ten per cent principle. A more absurd monarchical and anti-American principle was never announced on God's earth."

As Chairman of the Committee on Territories, in drawing a bill for the territories of Idaho and Montana, Senator Wade had encountered the difficulty of making citizens of the United States except as the States had created citizens. One of the defects of the Constitution of the United States as it then stood was that it contained no definition of citizenship. It was because citizenship of the United States came primarily, if not entirely, through the States that the ordinances of secession operated so powerfully on many men who not only doubted their wisdom but voted against them. James A. Campbell, a member of the Supreme Court of the United States from Alabama,* felt when his State went out that his citizenship in the United States was gone. He resigned and went with his State, but he was the first one back and the first lawyer to advance, in the Supreme Court, the definition of citizenship in the Fourteenth Amendment, which "Ben" Wade's counterpart in the House, Thaddeus Stevens, wrote and Wade helped to pass, namely, "All persons born in the United States and naturalized under its laws are citizens of the United States and of the State in which they reside."

On March 3, 1865, the day Congress refused to admit Louisiana, President Lincoln telegraphed General Grant that in treating with General Lee, he, Grant, was without authority to consider any political subject. Previously, as a result of Mr. Blair's visit to Jefferson Davis, on Lincoln's initiative,

* Ante, 80.

the two Presidents had informally agreed that the Generals might "enter into an arrangement by which hostilities would be suspended, and a way paved for the restoration of peace."

President Davis had "tipped off" General Lee, who on March 1, 1865, proposed to General Grant a Military Convention for the purpose of "a satisfactory adjustment of the present unhappy difficulties."

When General Grant put this up to Secretary of War Stanton, he got what he considered a reprimand, the above telegram of the third. That such was not Lincoln's purpose, but rather to guard against any further controversy with Congress, is manifest from the fact that, following the failure of the Hampton Roads Conference, Lincoln wanted his Cabinet to agree that he and they should advise Congress to offer the Confederate Government \$400,000,000 presumably to pay for the slaves, provided the war end and the States in secession acknowledge the authority of the Federal Government previous to April 1, 1865. His Cabinet was unanimous against this proposition.

And when the next or final meeting between Generals Grant and Lee was proposed by Lee, Lee asking for a meeting looking to peace, it took all the force and legal acumen of the only man to whom General Grant ever really deferred, his Chief of Staff, John A. Rawlins,—one of the Douglas men who at Cairo, in August, 1861, had helped Grant organize the Army of the Tennessee, the one Union organization that never suffered a defeat on the battle-field,—to induce General Grant to obey that order of March 3, 1865.

They argued long. Grant said, "If we get together I can settle everything." One of the military witnesses records that Rawlins concluded, "You have no right to meet Lee, or anybody else, to arrange terms of peace. That is the prerogative of the President *and the Senate*. Your business is to capture or destroy Lee's army." Finally the lawyer carried his point.

Accordingly, General Grant wrote General Lee, "As I have

no authority to treat on the subject of peace, the meeting proposed by you for 10:00 A. M. today could lead to no good."

The educated military men on General Grant's staff—even General J. H. Wilson, his biographer,—said Rawlins did not know much about logistics and strategy and other technical terms, but he had them all "skinned a mile" on the practical side. Not only Grant but Lincoln listened to John A. Rawlins. It was Rawlins who convinced Lincoln that Grant was not drunk at Shiloh. He did it as a lawyer, not as a military man. Through military channels Rawlins could not reach the president. Douglas was dead but his spirit still lived, and a private letter from one of the most capable if not the best of Douglas' followers moved the President.

When Grant and Lee finally got together, Grant violated Lincoln's instructions and promised Lee and his army complete amnesty, rations, and horses and mules with which to put in a crop, terms that Vice-President Johnson protested to Lincoln as being too generous.

But Grant went further and urged Lee to issue a proclamation to the South to accept the result. Lee had told Grant in their conversation that slavery was ended but the Thirteenth Amendment abolishing slavery had not yet been ratified by three-fourths of the States. If Grant did not remember, Lee was wise in remembering the limitations on Grant's authority. Lee's answer was: "That is hardly the function of a soldier who has just surrendered." Afterwards, as a private citizen, he issued an admirable address to the Southern people.

President Johnson says that many of his acts were due to General Grant's advice and that then Grant deserted him when the final test came and obeyed the Senate and Congress rather than the President, that is, Grant accepted the tenure of office law after it was passed over President Johnson's veto.

CHAPTER XV

THE LEGAL TENDER DECISIONS

FIRST LEGAL TENDER ACT OF THE UNITED STATES—THE “GREENBACKS” OF 1862—HUGH MCCULLOUGH BECOMES SECRETARY OF THE TREASURY—HIS CAPABILITIES—URGES RETIREMENT OF THE “GREENBACKS”—THE ACTS OF 1866 AND 1868—THE “PUBLIC CREDIT ACT” OF 1869—CONSTITUTIONALITY OF THE “GREENBACKS” SUSTAINED.

THE first Legal Tender Act of the United States, as we have shown, that of February 25, 1862, authorized an issue of \$150,000,000 in paper currency. Like amounts were provided for by the acts of July 11, 1862, and March 3, 1863, in all a total of \$450,000,000. This currency was called “greenbacks,” from the color of the paper on which it was printed. The denominations were one dollar, five dollars, ten dollars, and larger amounts, and also five cents, ten cents, twenty-five cents, and fifty cents.*

“This note is a *Legal Tender* at its face value, for all debts, public and private, except duties on Imports and Interest on the Public Debt.” Any one can see this declaration on the money of our Federal Reserve series of 1917. Originally, there was also printed on the back of these notes, immediately after the foregoing, the following, “*and is exchangeable for United States six per cent bonds at the pleasure of the United States after five years.*” This is the provision Zachariah Chandler wanted to limit to three years.†

Before the close of the war, Congress struck out this option‡

* Ante, 32.

† Ante, 156.

‡ Post, 193.

at Secretary Chase's request, and hence it is, we conclude, that he was not strong on the financial side, for had that provision remained on the notes, they would have been retired soon after the close of the war and we would have been back to the "money of the Constitution," where now we probably never shall be, all the bankers, college professors, political economists, and statesmen to the contrary, notwithstanding.

June 30, 1864, Mr. Chase resigned as Secretary of the Treasury, and December 6, following, President Lincoln appointed him Chief Justice of the Supreme Court. His subsequent action in swinging the court to declaring the greenbacks unconstitutional, as we will show, is conclusive proof that he yielded his views to the virile man who controlled the Government in February, 1862.*

William Pitt Fessenden of Maine, who, as a senator, had opposed the original issue of the greenbacks, became Secretary of the Treasury when Mr. Chase resigned. But the work was irksome to Mr. Fessenden. Like the old lawyer's wife, he liked to think out loud. Not many statesmen can stick to it day after day with only a desk and four walls for an audience. He resigned at the end of Mr. Lincoln's first term.

March 6, 1865, Hugh McCullough, who had been Comptroller of the Currency from the time that Bureau had been organized in March, 1863, to put the National Banking Act to functioning, was made Mr. Fessenden's successor. But long before Secretary Fessenden resigned, Comptroller McCullough was the actual head of the Treasury. He was one of the State bankers Elbridge G. Spaulding had to reconstruct when he turned Chase and Lincoln down, and the National Banking Act did not get through Congress until it was made satisfactory to Hugh McCullough.†

Never had the Treasury Department of the United States a more capable head. He had been a friend of my father in the early days, and while my father was in President Arthur's cabinet, in 1883-4, Mr. McCullough was a neighbor, living a

* Ante, 55.

† Post, 255.

block away, and a frequent visitor to our home. Many an hour have I heard him discuss "men and measures."

As Secretary of the Treasury, he continued after Lincoln's assassination throughout President Johnston's term. Before a single soldier had been discharged, Secretary McCullough began urging the retirement of the "greenbacks." He pressed it in his annual report to Congress in December, 1865. He predicted that failure to retire the greenbacks would result, as it did result, in the panic of '73. He apparently was not a monometalist, for he said, "By common consent of the nations, gold and silver are the only true measures of value. I have myself no more doubt that these metals were prepared by the Almighty for this very purpose, than I have that iron and coal were prepared for the purpose for which they are being used."

But not until February 1, 1866, did he get the necessary authority—and he was then authorized to retire \$10,000,000 in the first six months and then not to exceed \$4,000,000 in any one month thereafter.

Secretary McCullough proceeded to retire the greenbacks until stopped by the act of February 4, 1868. Thaddeus Stevens said the contraction of the currency was proceeding too rapidly, and that the act of April 1, 1866, made the Secretary of the Treasury a Czar. Many of the corporate and banking interests agreed with Mr. Stevens. Jay Cook, *per se* a speculator, said McCullough was not much of a banker anyway.

In addition to the notes retired by Secretary Chase, by exchanging them for five per cent twenty-year bonds, the \$64,000,000 Secretary McCullough retired brought the total of the greenbacks outstanding down to \$354,000,000, and at this figure, the Act of 1868 said they should remain.

But this last named act produced so much uncertainty that Congress was forced to pass another act, that of March 18, 1869, known as the "Public Credit Act," which declared that United States notes and all other obligations of the govern-

ment, except those expressly payable in paper money, should be paid in *coin*.

In his book, Mr. McCullough says:*

“Two mistakes Chase admitted—one, in consenting that the United States notes should be made a Legal Tender.”

The other mistake we have just alluded to, namely, advising the repeal of the clause which made these notes convertible with bonds within five years.

Mr. McCullough further says:†

“I had no reason to doubt as to what the opinion of Mr. Chase, the Chief Justice, would be, when he was called upon to face the question judicially; and I thought if he, who was in a measure responsible for the acts—the Legal Tenders,—considered them unconstitutional, that his associates would be sure to agree with him.”

While Secretary McCullough was opposed to the original issue of the Legal Tenders and wanted them retired, he did not want them retired all at once, that is, he did not want a decision by the Supreme Court declaring them unconstitutional until after all demands on the Treasury growing out of the war had been provided for, and especially until after the compound interest-bearing seven and three-tenths notes should be converted into bonds.

The records of the Supreme Court of the United States are conclusive that it was at the request of Secretary of the Treasury McCullough that the court postponed action until “the Treasury Department was prepared for the expected decision.”

The courts of Indiana were the first to sustain the constitutionality of the greenbacks, and Mr. McCullough had a hand in that decision. In all, fifteen State courts of last resort sustained them while New Jersey was the only other State, except Kentucky, to hold them invalid.

* “Men and Measures of Half a Century,” p. 186.

† Ibid, p. 171.

CHAPTER XVI

THE CASE OF REYNOLDS *VERSUS* THE STATE BANK OF INDIANA

THE STATE BANK OF INDIANA ORGANIZED BY HUGH MCCULLOUGH
—MAINTAINS SPECIE PAYMENTS OF ALL OBLIGATIONS UNTIL
THE LEGAL TENDER ACTS—BANKER MCCULLOUGH ARRANGES
FOR A TEST OF THE LEGALITY OF THE LEGAL TENDER NOTES—
DECISION OF CHIEF JUSTICE PERKINS IN THE INDIANA
SUPREME COURT—SKETCH OF JUDGE PERKINS.

AS evidence of Hugh McCullough's capability as a lawyer, banker and executive,—“a practical man,” Theodore Roosevelt would call him,—the case of Reynolds *vs.* the State Bank of Indiana,* which was decided, as the records of the Supreme Court of Indiana show, May 30, 1862, is conclusive. But seven days before, to wit, on May 23, the transcript from the Court below was filed in the office of the Clerk of the Supreme Court.

Hugh McCullough, a native of and educated in Maine, had studied law in Boston, where he learned some of his finance from the lips of Daniel Webster. In 1833 he removed to Indiana and began the practice of law at Fort Wayne. He was a success at the bar, but in 1835 accepted a position as cashier in a branch of the State Bank of Indiana at Fort Wayne. The bank's charter expired in 1857, and was not renewed because it was a “monopoly,” although a banking system is of necessity a monopoly.

On the 1st day of January, 1857, Hugh McCullough started the Bank of the State of Indiana with a capital of \$2,000,000,

* 18 Ind. 467.

under a charter which politicians of both political parties and some of the old bankers had secured from the Indiana legislature, in anticipation of the expiration of the charter of the State Bank. It was a central bank with twenty branches. It went through the panic of '57 under McCullough's management and paid out the coin of the realm to all comers.

As to how it met the crisis produced by the legal tenders, we will let Mr. McCullough himself tell:*

"By the charter, the obligations of the bank could be discharged only by coin. The legal-tender notes had been declared by Congress to be lawful money in all payments, except at the custom houses. Could they be regarded as lawful money in the discharge of the coin obligations of the bank? This question could only be decided by the Supreme Court of the State, and it was quite important that a decision should be made before any risk had been incurred. I therefore waited upon Judge Perkins, the Chief Justice of the Supreme Court, who was not only eminent as a judge, but a Democrat of the strictest order, explained to him the condition of the bank, and that its inability to maintain circulation upon a gold basis (gold then being at a premium over legal-tender notes) was preventing it from doing what it was important it should do in aid of the business of the State. I informed him that all the other banks of the country were treating the legal-tender notes (greenbacks, as they were called) as lawful money, and using them in the discharge of their coin obligations, and that the Bank of the State was desirous of doing the same if it would not be in violation of the requirements of its charter; and I then asked him whether the Supreme Court, if the question should be presented in a case involving it, would order the case to be advanced upon the docket, in order that a decision might be expected at an early day. Without a moment's hesitation, he replied that he could not answer for his associates, but that he thought the question a very important one, and that he had very little doubt that such an order would be made."

The day following this interview with Judge Perkins, Mr. McCullough goes on to say, a fifty-dollar note, issued by the

* "Men and Measures of Half a Century," p. 136.

branch bank of Indianapolis, was presented for payment in coin. Instead of coin, legal tender notes were offered in payment, and were refused.

A suit was immediately brought in the Circuit Court, and the position of the bank was sustained. The case reached the Supreme Court on the 23d day of May and was decided, as before stated, on the 30th. In one respect Mr. McCullough is in error in his statements, for the report of the opinion shows that one of the judges, Samuel Hanna, dissented on the ground that nothing but gold and silver could be made a legal tender. The other two went along with Chief Justice Perkins, the fifth being absent. The report shows that the transaction which brought about the lawsuit occurred on the first day of April, 1861, and that they did not make the fast time in the Circuit Court that they did in the Supreme Court.

Judge Perkins* wrote a good "sound money" decision,† from the constitutional standpoint, quoting Webster's definition as do all the "sound money" judges who came after him. He pressed the point that nothing but gold and silver could be money, and then, after pointing out that it was manifest from the records of his court what it would do as an ordinary proposition, he argued as follows.

The Constitution of the United States, Article 1, Section 10, ordains that no State shall "coin money, emit bills of credit, make anything but gold and silver a legal tender, in payment of debts. Indiana, in loyal submission to this limitation upon her power as a sovereign State, in framing her constitution provides (Article 10, Section 7) that all bills or notes issued as money shall be at all times redeemable in gold or silver; and, as we have seen, the legislature, in chartering the Bank of the State of Indiana, an institution created to issue a circulating medium of paper, required her compliance with this constitutional provision. From such compliance, the State cannot release the bank. Can the United States do so? is the question.

* 17 Ind. 497.

† Ante, 142.

"If the United States, under the constitution, can make Treasury notes a legal tender in payment of debts between citizen and citizen, she can make them thus between the States of the Union, corporations and citizens. And coming now to the particular case before us, as the section in the charter of the Bank of the State above quoted was inserted to make it conform to the restriction upon the power of the State imposed by the Constitution of the United States, viz.: that a state shall not create money in a constitutional sense of that word, and shall not, by her own laws, recognize anything as such but gold and silver, it is not reasonable that we should construe that section as a restriction upon the right of the bank to avail herself of the privilege of using anything else as money as a legal tender, which the United States by her laws, might legally declare to be such. The true interpretation of the section must be that the bank shall not refuse to redeem her bills in what the Congress shall constitutionally make legal tender money. The bank can not be compelled to receive treasury notes from the citizen, in one hand, and pay to the citizen gold and silver in the other."

Then, after a beautiful exposition which everybody ought to read from the historical and commercial standpoint of the limitations in the National Constitution against the power of the National Government to make bills of credit issued simply upon the indebtedness and faith of the government legal tenders in payment of debts, Judge Perkins decides the case.

"The gold and silver of the rebel republic today is as good, the world over, as is that of the old legitimate republic, while its bills of credit are becoming as worthless as withered autumn leaves. Such a currency, the experience of the world proves, paper cannot be. But in the case at bar, our decision is but that of a *nisi prius* court, and we had better err in acquiescing in, than in declaring null the action of Congress.

"Influenced, then, by deference to the action of the Federal Government, by the rule that all doubts must be resolved in favor of the law (a principle that tends constantly to augment the powers of limited governments), by the exigency of the time, by

the consideration of the local injury temporarily to our State that would follow a different decision, and the fact that the question can only be decided finally by the Supreme Court of the United States, we hold that the act of Congress making Treasury notes a legal tender is within the Constitution and valid. Such will be the ruling of this Court till the Federal Court shall determine the question otherwise. The bank, by receiving the Treasury notes, does not expose its franchise to forfeiture."

Although he was the first judge on an appellate bench to sustain the soldiers' money, and although he called the other kind of Democrats traitors and rebels, the soldiers in the field voted Judge Perkins off the Supreme bench in 1864.

Like Stephen A. Douglas, Judge Perkins was born in Vermont and his father died while he was an infant. He was practically bound out to a Massachusetts farmer, with whom he remained until he was twenty-one, when he took up the study of law at Coles, New York. In 1835 he opened a law office in Richmond, Indiana, was soon elected prosecuting attorney, and at thirty was enjoying a large practice, when, in 1844, he was appointed by Governor Whitcomb a member of the Indiana Supreme Court. A Whig Senate refused to confirm him, but he was appointed again in 1846 and then confirmed.

The Indiana constitution of 1850 legislated all the judges out of office and provided that the judiciary of the State should be elected by the people for six-year terms, the first election to be held in October of that year. In the Democratic Convention held to nominate candidates for the Supreme Court from the Indiana second district, Judge Perkins defeated his brother judge and fellow townsman, Isaac Blackford, for the nomination, and was elected by the people and re-elected in 1858.

Judge Blackford had been the leading and the dominating member of the court for thirty-five years, from the time of its organization under the constitution of 1816. Blackford's Reports are classic as an exposition of what Robert Dale Owen

said was "the barbarism of the common law." Under a mandate from the people—for the Indiana constitution of 1850, which is still in force, is different from that of 1816, in that the Supreme Court and not the legislature is the chief power in the State,—Samuel E. Perkins assumed the leadership of bench and bar during that interesting transition period while the mode of administering justice was passing from the common law practice to the reformed or simple mode of procedure. It was said that he assumed too much power. His handling of the legal tender acts shows he knew how to wield it. Democratic orators and lawyers like John W. Kern attacked him in conventions but never could unhorse him. Old lawyers are as opposed to innovations and the shortening of procedure as are military men. Many a judge today could profit by imitating his short cuts and opinions.

Judge Perkins came back with his party in 1878 and died a member of the Supreme Court of Indiana, in December, 1879. While McCullough says he was a Democrat he does not tell the kind of a Democrat he was. He was not of that class of Democrats who, as Oliver P. Morton said, always rode backwards in a passenger train and never saw a whistling post until they were past it. He was a Douglas Democrat, and believed in "Squatter Sovereignty."

In responding to the memorial presented by the Indiana Bar Association, to be put on the records of the courts, Judge Biddle said:

"Whatever difference of opinion among patriots there might have been then, 1862, that the course of Judge Perkins was fearless, independent and upright, is not now doubted by any."

As soon as the Legal Tender Bill was introduced by Mr. Spaulding, Secretary McCullough began calling in the notes of his banks, paying even a small premium in gold to get them. Then, with the gold premium still small, he put all the surplus

funds of his bank into gold. When he resigned its presidency, April 1, 1863, to become Comptroller of the Currency, McCullough's bank held \$3,300,000 in gold on a capital of \$3,000,000. Liquidating and changing his twenty Indiana branches into National Banks, the reader can understand how the "rake-off" was considerable for McCullough's former stockholders.

Will any banker deny, after what Hugh McCullough as a banker says he did to bring about a decision sustaining the greenbacks,—when as a banker he knew and said they were invalid, and then promoted a decision to knock them out,—that the best of our bankers don't play both ends as well as the middle of a lawsuit?

CHAPTER XVII

THE LEGAL TENDER ACTS ATTACKED

KENTUCKY COURT OF APPEALS DECLARES THE GREENBACKS UNCONSTITUTIONAL—THE CASE OF HEPBURN *VS.* GRISWOLD GOES TO THE UNITED STATES SUPREME COURT—TEST OF VALIDITY OF PAPER MONEY IN SETTLEMENT OF A GOLD CONTRACT—THE COURT HOLDS THE LEGAL TENDER ACT UNCONSTITUTIONAL—CHIEF JUSTICE CHASE'S OPINION—JUSTICE MILLER WRITES DISSENTING OPINION—THE SUPREME COURT TAKES UP THE CASES OF LATHAM *VS.* U. S. AND DENNING *VS.* U. S.—ORDERS RE-ARGUMENT OF HEPBURN *VS.* GRISWOLD AND KNOX *VS.* LEE—CLARKSON N. POTTER'S ARGUMENT FOR THE VALIDITY OF THE LEGAL TENDER ACTS—THE COURT REVERSES ITSELF IN HEPBURN *VS.* GRISWOLD—JUSTICE STRONG'S OPINION—JUSTICE BRADLEY'S DISSENT—SILVER DEMONETIZED—"THE CRIME OF '73"—THE INFLATION BILL—THE BLAND-ALLISON SILVER ACT.

WE have shown in the last chapter* how important it was for Hugh McCullough's Indiana bank to sustain the greenback legislation and that while he wanted to go back to specie payments he did not want to go back too quickly.

The first case to give Secretary McCullough anxiety, after he became head of the Treasury Department, was from New York.† In it the New York Court of Appeals had upheld the legal tender money—Roosevelt wanted gold and said the Legal Tender Acts were unconstitutional. The Supreme Court of the United States dismissed the appeal, saying it had no jurisdiction,—a palpably erroneous ruling, which it later retracted.

* Ante, 190.

† Roosevelt *vs.* Meyers, 1 Wallace, 237.

A writ of error from the Kentucky Court of Appeals, in the case of Susan P. Hepburn *vs.* Henry Griswold, reached the Supreme Court of the United States on the 23d of June, 1866. September 15, 1865, the Court of Appeals of Kentucky, which finally had held the same way the May before, by a divided bench had declared the greenbacks unconstitutional.

June 20, 1850, Mrs. Hepburn, by a promissory note, had agreed to pay Henry Griswold \$11,250 on the 20th of February, 1862. She did not pay at maturity, and in March, 1864, Griswold sued her in the Louisville Chancery Court for \$12,720, the face of the note with accrued interest. She promptly tendered this amount in legal tender notes of the United States, to the clerk of the Louisville Court for Griswold's account. A gold dollar was then worth over two dollars in greenbacks. Griswold refused the tender because he said he was entitled to coin. The Louisville Chancery Court declared the tender good and adjudged the debt paid. Griswold appealed to the Kentucky Court of Appeals. The first Legal Tender Act was not passed until five days after the Hepburn debt matured.

As the old lawyers would say, here was a case that would go to the gizzard of the question. Secretary McCullough was alarmed, but breathed easier when he was assured by the lawyers for the Government that he would probably be out of office before a decision, as the court was several years behind. But on January 6, 1868, the parties to the suit, in order to get an early decision, agreed to submit the case under the 20th Rule, that is, on briefs without oral argument.

March 2, 1868, Attorney-General William Stansberry appeared in the Supreme Court with a letter from Secretary McCullough. In this letter the Secretary stated that the issue involved—the constitutional one—was of great importance to the Government. The letter was filed with the clerk, and on motion of the Attorney-General, who stated he was so engaged he could not then take up the argument, the case was ordered

to be continued to the December term, and was set for oral argument, December 8, 1868, with leave to the Attorney General to appear in behalf of the United States.

Clarkson N. Potter, of New York, an attorney for the associated New York banks, attacked the validity of the Legal Tender Act in a day's argument. For two days Benjamin R. Curtis and Attorney-General William M. Everts replied. Mr. Potter had been before the Court in the previous cases in which the Court had upheld contracts for the payment of notes in coin. Mrs. Hepburn was willing that he should come in under her petticoats and argue the case of the banks.

It took the Court a long time to come to a conclusion. Not until November 27, 1869, did five of its members decide to hold the Legal Tender Act unconstitutional. At first Judge Grier had declared himself in favor of the act, but later he changed his mind and thus made it five to three. But the opinion was not agreed on until January 21, 1870, and then it was held up to February 7, to let Justice Miller write his dissenting opinion. Otherwise, it would have been delivered January 31.

Chief Justice Chase delivered the opinion of the Court, or rather, of the majority of five Justices.

After adverting to the fixed policy of the Government from its foundation, of recognizing only gold and silver money as legal tender, the Chief Justice quoted what Spaulding had quoted from Chief Justice Marshall* in the case of *McCullough vs. Maryland*,† as a limitation on the power of Congress. Marshall was not then using these words as a limitation, he was enlarging the powers of Congress under the Constitution. They were his major premise to the end that the Government under the Constitution, although limited as to the subjects over which it took jurisdiction, was authorized in carrying those powers into execution to exercise all powers necessary and proper to that end. Agreeing with Chief Justice Marshall in

* Ante, 154.

† 8 Wall 603, p. 625.

his conclusion as a lawyer, it would seem that Chief Justice Chase laid down a premise from which the hardheaded practical man or lawyer was justified in drawing a different conclusion. In short, the Marshall and Chase premise does not sustain Chase's conclusions but does Spaulding's.* All of which proves that Marshall was not the jurist some people claim he was. James Wilson wrote a better opinion† in sustaining a National bank under the Articles of Confederation, and not half so long as Marshall did in *McCullough vs. Maryland*. Marshall nowhere refers to Wilson's opinion, on which he might have rested in a short luminous opinion. Instead he wrote and wrote. He went too far around, leaving a gap through which Spaulding came, using *McCullough vs. Maryland* for a purpose to which Marshall and Chase as well were opposed.

Chief Justice Chase proceeded in his opinion :

"It is not surprising that amid the tumult of the late civil war,‡ and under the influence of apprehension for the safety of the Republic, almost universal, different views never before sustained by American statesmen or jurists were adopted by many. . . . The case before us is one of private right.

"The Government and its creditors might agree as to what was money, but the Government could not say what its creditors should pay to their creditors. In the absence of a special agreement between third parties, only the money of the Constitution, gold and silver coin, was a legal tender in payment of debt.

"The Legal Tender features were not necessary to make them circulate, because the bank notes were not made legal tenders and they circulated as well as the greenbacks."

The three members of the Court who dissented had all been appointed by President Lincoln,—Justices Davis,§ Swayne and Miller. Lincoln, we have shown, was against the greenbacks. In his dissenting opinion, Justice Miller adverted to the fact that Chief Justice Marshall was for an enlarged view of the implied powers of the National Government under the last clause of Section 8 of Article 1 of the Constitution,—“To make

* Ante, 153.

† Ante, 2.

‡ Ante, 169.

all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the Constitution in the government of the United States, or in any department or officer thereof,"*—the clause on which Mr. Spaulding so much relied, and also he adverted to the fact that, as Secretary of the Treasury, the Chief Justice had countenanced the legal tender feature of the greenbacks.

The day the case was decided, gold was quoted at 120½ to 121. June 17, 1865, when the Kentucky Court of Appeals decided the case, gold was quoted at 165. So Mrs. Hepburn gained something by her appeal, or by allowing Mr. Potter to come in and argue his client's case under her petticoat.

December 15, 1869, Justice Grier of the Supreme Court sent his resignation to President Grant, to take effect February 1, 1870. July 23, 1866, Congress had passed an act reducing the membership of the Supreme Court to seven, this change to take effect as soon as, by death or retirement, the members sitting should be reduced to that number. The intention was to prevent President Johnson, who was not "homogeneous" with Thaddeus Stevens and the other leaders of Congress on reconstruction, from getting control of the Supreme Court. Justice Catron died in May, 1863, and no successor had been appointed up to the time of the passing of the act of 1866.

April 10, 1869, Congress passed another act restoring the number of Justices to nine, to take effect December 1, 1869.

A large majority of the members of both the House and Senate, at Senator Zachariah Chandler's instance,† petitioned General Grant to appoint Edwin M. Stanton as Justice Grier's successor. General Grant did so, December 20, and Stanton was promptly confirmed, by a vote of 46 to 11, but died four days later.

December 14, 1869, President Grant had nominated E. R. Hoar of Massachusetts his Attorney-General to fill the other vacancy on the Supreme Bench, but February 4, 1870, the

* Ante, 153.

† Ante, 151.

Senate rejected the appointment, by a vote of 33 to 24. Mr. Hoar was not liked because, it was said, he had made recommendations to President Grant unpopular with the Senators, for nine newly-created places on the United States Circuit Court, and General Grant had followed Hoar's recommendations.

February 7, 1870, General Grant sent the names of William Strong of Pennsylvania and Joseph P. Bradley of New Jersey to the Senate for the two vacancies in the Supreme Court. Strong was confirmed February 18 and Bradley March 21.

Immediately it was charged that the purpose was to revolutionize the Court. The judicial recall had not then been heard of, but the judgment knocking out the legal tenders was certainly recalled.

Both Strong and Bradley, as Counsel for the Camden and Amboy Railroad Company, had given opinions affirming the constitutionality of the greenbacks. It was also stated in the press that the Camden and Amboy Road, in paying its interest upon its bonds subsequent to the decision, made reservations looking to the reversal of the judgment in *Hepburn vs. Griswold*. The railroads at that time, especially the Pennsylvania, did not want to pay gold to their employes and bondholders. Thaddeus Stevens, it is said, had pressed for Strong's appointment.

But aside from all this, there was no question about Justice Strong's position. As a member of the Supreme Court of Pennsylvania, over an able dissent, he had written an opinion sustaining the legal tenders. In legal ability, neither he nor Bradley had a superior.

March 25, 1870, Attorney General Hoar produced a sensation by moving that the two legal tender cases, *Latham vs. U. S.*, and *Denning vs. U. S.*, be set for argument. Chief Justice Chase objected because he said it had been agreed that these cases had been decided by *Hepburn vs. Griswold*. Justice Davis, with a good deal of heat, it was reported, denied this, and the motion went over to the next Monday, April 1.

When the court announced, April 11, that there would be a rehearing in *Hepburn vs. Griswold* and the Latham and Dunning cases would be heard the 18th, the latter dismissed their appeals, and then, April 30, the Court ordered a re-argument in *Knox vs. Lee*,* which had been argued in November, 1869, and involved primarily the confiscation law of one of the Confederate States, but only incidentally the constitutionality of the greenbacks.

At the re-argument, February 23, 1871, after both sides had admitted the validity of the Legal Tender Acts, and the case was at its close, Clarkson N. Potter, who, as we have shown, had argued the *Hepburn* case, asked to be heard again on the constitutional question. The Court, over the dissent of Justices Nelson and Field, ordered a second re-argument by Mr. Potter and Attorney General Ackerman, on April 18, 1871.

Again Mr. Potter was given unlimited time, and he covered every feature of the constitutional and economical questions involved. He pointed out the unfairness and dishonesty in changing the monetary system, in enabling a creditor to pay his debts at fifty cents on the dollar,—it was transferring money or property from one man to another without any consideration and in opposition† to the Constitution of the United States, viz. that no State shall make anything but gold and silver coin a tender in payment of a debt or pass any *ex post facto* law or law impairing the obligation of a contract.

Manifestly Mr. Potter guessed that the Court would overrule the judgment in *Hepburn vs. Griswold*, for in the windup of his argument, he originated the judicial recall:

“Overrule the former opinion and judgment of this court and sustain an Act of Congress, and it will not be accepted as final; and furthermore, the Court will lose that confidence of the people it has enjoyed for the seventy years of its existence, and especially will this be true if the change is wrought by a change in the personnel of certain members of the Court.”

* 12 Wall 457.

† Article 1, Section 10, Clause 1. Ante, 148, 152. Post, 210.

May 1, 1871, the Court made the change. It overruled *Hepburn vs. Griswold*, by a decision of five to four, and upheld the constitutionality of the Legal Tender Act of Congress. The controversy that had raged so long was reflected in the opinions—three dissenting, one by Chief Justice Chase, another by Justice Clifford, another by Justice Field. Justice Nelson adhered to his former view but did not write an opinion. The opinion of the Court and the dissenting opinions are as able as are any in the books.

One of the anomalies of judicial precedent is that Justice Miller, who had written the dissenting opinion when the case was affirmed, and who possessed a facility for expressing himself surpassed by none, did not write the formal opinion of the Court. This task was assigned to a new member, Justice Strong. It was a classic in judicial reasoning, but solely as a war measure it upheld the Legal Tender Act. Justice Field, in dissenting, hung his opinion, to use a lawyer's term, on the language of Article 1, Section 10, Clause 1, *viz.*, that the States could only make gold and silver money a legal tender, and on Webster's definition of money.* He urged that if the power exists at all, which he denied,—namely, the power to debase the coin of the realm,—it exists in time of peace as well as in time of war. It will be remembered that Spaulding and Stevens only claimed it as a war power.

Justice Strong did not get over Field's hurdle, but Justice Bradley did so in a concurring opinion, manifestly written to demonstrate the proposition that the Republic unlike the States was not restrained by Article 1, Section 10, Clause 1, as the States were, and could make paper money a legal tender in time of peace, and it was so held fourteen years later, namely, in March, 1884, in the Legal Tender case, *Juillard vs. Greenman*.† Justice Gray writing the opinion of the Court with Justice Bradley concurring and Justice Field still dissenting,—and still sticking to the Websterian definition of money.‡

* Ante, 15, 142.

† 110 U. S. 420.

‡ Ante, 142. Post, 247.

Never did William Jennings Bryan or any of the orators of the Populist Party press the claims of the debtor class more strongly than did Justice Bradley in this dissenting opinion.* For a lawyer who had never had a "bob-tail" client,—he had always represented "big interests," banks, trust companies, railroads and canal companies,—his declarations are conclusive that it cannot be predicated with accuracy what the reaction of any legal mind will be.

"The debtor interest of the country represents its bone and sinew and must be encouraged to pursue its exertions. If relief were not afforded, universal bankruptcy would ensue, industry would be stopped, and government would be paralyzed in the paralysis of the people. It is an undoubted fact that during the late Civil War, the activity of the workshops and factories, mines and machinery, shipyards, railroads and canals of the loyal States, caused by the issue of the legal tender currency, constituted an inexhaustible foundation of strength to the National cause.

"These views are exhibited, not for the purpose of showing that the power is desirable (namely, the power to debase the coin of the realm), but for the purpose of showing that it is one of those vital and essential powers inhering in every national sovereignty and necessary to its self-protection.

"But the creditor interest will lose some of its gold? Is gold the one thing needful? Is it worse for the creditor to lose a little by depreciation than everything by the bankruptcy of his debtor? Nay, is it worse than to lose everything by the subversion of the Government?

"So it is with the power of the Government to borrow money, a power to be exercised by the consent of the lender, if possible, *but to be exercised without his consent, if necessary.* And when exercised in the form of legal tender notes or bills of credit, it may operate for the time being to compel the creditor to receive *the credit of the Government* in place of the gold which he expected to receive from his debtor."

One of the ablest jurists who ever sat on any bench—and a partisan still, as some of the critics and historians not unjustly

* 12 Wallace, p. 564.

rate him,—Joseph P. Bradley was *per se* an advocate. The historian and the political economist do not understand the advocate, and for them, Judge Bradley held contempt.

"I deem it unnecessary to enter into a minute criticism of all the sayings, wise or foolish, that have, from time to time, been uttered on this subject by statesmen, philosophers or theorists. The writers on political economy are generally opposed to the exercise of the power (that is, to debase the coin of the realm or make a promise on a piece of paper, money). The considerations which they adduced are very proper to be urged upon the depository of the power. The question whether the power exists in a national government, is a great practical question, relating to the national safety and independence, and statesmen are better judges of this question than economists can be."

Adverting to the attitude of France and England, and of the money power of Europe generally, he continued:

"It would be sad, indeed, if this great nation were ever to be deprived of a power so necessary to enable it to protect its own existence, and to cope with the other great powers of the world.* No doubt foreign powers would rejoice if we should deny the power. No doubt foreign creditors would rejoice. They have, from the first, taken a deep interest in the question. But no true friend of our Government, to its stability and its powers to sustain itself under all its vicissitudes, can be indifferent to the great wrong it would sustain by a denial of the power in question—a power to be seldom exercised, certainly, but one, the possession of which is so essential, and as it seems to me, so undoubted.

"I do not say it is a war power, or that it is only to be called into exercise in time or war; for other public exigencies may arise in the history of a nation which may make it expedient and imperative to exercise it."

One of the causes, as detailed by Justice Bradley, of the revolt of the American Colonies was the prohibition by the

* Ante, 145.

British Parliament, in 1751, at the behest of the English merchants, of the practice of the New England Colonies, with Massachusetts in the lead, of making paper money or "promises to pay," written or printed, legal tenders in payment of all public and private debts and demands. The Parliament held that only kings could do this, because it was an attribute of sovereignty. Justice Bradley argued that when the Colonies became independent, this power—although it was argued in the dissenting opinions that its exercise was dishonest,* and a republic should be honest—became an attribute of the sovereignty of the United States. Only the States were prohibited by the Constitution of the United States from making anything but gold and silver coin a legal tender in payment of debts.†

In the interim following the Declaration of Independence, and before the adoption of the Federal Constitution, the States continued to exercise that power. Massachusetts and other Colonies, on the breaking out of the Revolution, disregarding the prohibition of Parliament, again conferred upon their bills the quality of legal tender.

Again we quote Justice Bradley:

"The Continental bills were not made legal tenders at first, but in January, 1777, the Congress passed resolutions declaring that they ought to pass current in all payments, and be deemed in value equal to the same nominal sums in Spanish dollars, and that anyone refusing to so receive them ought to be deemed an enemy to the liberties of the United States; and recommending to the legislatures of the United States to pass laws to that effect."

Although the paper thus issued went to zero, and hence we have the expression, "not worth a Continental," Justice Bradley went on:

"But, it may be said with truth, that we owe our national independence to the use of this fiscal agency.

"These precedents are cited without reference to the policy or

* Ante, 207.

† Ante, 29, 148, 152.

non-policy of the several measures in the particular cases; that is always a question for the legislative discretion. They establish the *historical fact* that when the Constitution was adopted, the employment of bills of credit was deemed a legitimate means of meeting the exigencies of a regularly constituted government, and that the affixing to them of the quality of legal tender was entirely discretionary with the legislature.

"I am aware that, according to the report of Mr. Madison in the original draft of the Constitution, the clause relating to the borrowing of money reads, 'To borrow money and emit bills on the credit of the United States,' and that the words, 'and emit bills' were, after some debate, struck out."

"'To borrow money on the credit of the United States' gave Congress an unlimited discretion as to the means to be used."

This inherent power of sovereignty, control of the sword and purse, concluded Justice Bradley, was nowhere destroyed in the Constitution,* but transferred, by the Constitution, from the States to the National Government, to be exercised in time of peace as well as in war.

Bradley's opinion changed our entire monetary system.

The opinion of the Court with the dissenting opinions were filed in the Clerk's office January 7, 1872. The time was soon to come when the corporations and the money powers at least regretted that their former counsel had been so strong in helping them in an emergency. All of which conclusively demonstrates that the selfishness of the money power, so-called, should not be the final factor in determining the fiscal policy of a free and independent people.

Whatever the theory as to our judicial power may be, a decision of five to four is seldom ever accepted as final, and never in a political case. And in the ultimate analysis, the money question, as Justice Bradley says, is a political question. Being a political question, no decision can be final. The money question is simply a question of good faith. The soviet who

* Ante, 29, 208, 210.

would destroy capitalization is mistaken as to the cause of the trouble. It is inflation, whether by debasing the coin of the realm or printing large volumes of paper money, that is the evil. Of course it is dishonest, and always has been. When it comes to this the banker has always played in with the dictator, for the rake-off is big. William Jennings Bryan thought he was beating the New York bankers with the Federal Reserve system and the government printing the money, but it makes little difference with what kind of money you play, whether gold, silver, or paper, a professional always beats you. The City Bank of New York, which Mr. Bryan so much deprecates, paid dividends alone for the fiscal year ending June 30, 1925, of one hundred per cent, and how much they had written off for bad debts and charged to profit and loss account is not stated. The people or at least large masses of them are the losers when it comes to inflating. In farming the effect of inflation is most manifested. Besides, except for Justice Bradley, the court was unanimous that it was only in time of war that the government could make anything but gold and silver a legal tender. So the contest went on until, as will appear, all came to Justice Bradley's conclusion.*

One year after the Legal Tender decision, namely on February 12, 1873, the advocates of "sound money" so called had so far recovered themselves that they demonetized† silver by stopping its coinage, "because of the immense increase in the production of silver which threatened to outstrip the production of gold,"—as, in fact, it soon did. At that particular time, the silver in a silver dollar was worth more as bullion than as money, so the pretext of making the gold dollar the unit easily obtained.

But, as Hugh McCullough had predicted, the signs of panic began to appear. Men said they had been trapped into voting for the gold standard, and then was heard the term, "The Crime

* Post, 230.

† Ante, 52.

of '73." The panic came on, due to speculation and precipitated by lack of money. Recourse was had to Justice Bradley's opinion, which authorized unlimited issues of paper money in time of peace, and the congress that met in December, 1873, passed what was called the Inflation Bill, increasing the issue of greenbacks from \$356,000,000 to \$400,000,000. April 22, 1874, President Grant vetoed the bill,* although Senator Morton claimed it was understood that when the bill was started it had Grant's approval. Senator Roscoe Conkling,† who, as we have shown, had originally opposed the issuing of the greenbacks, was given credit for the veto.

In the next Congress, in 1875, Representative Richard ("Silver Dick") Bland, a Democrat from Missouri, introduced a bill into the House providing for the free and unlimited coinage of silver. Senator William B. Allison, a Republican from Iowa, introduced a similar measure in the Senate. The two collaborated, and finally, February 28, 1878, the Bland-Allison Act was passed, over President Hayes' veto,‡ providing for the coinage of not more than 4,000,000 nor less than 2,000,000 silver dollars per month. The administration, through Secretary John Sherman, announced it would only coin the lesser amount authorized. From the establishment of the Mint, in 1791, up to this time, a total of only 10,000,000 silver dollars in all had been coined.

So on May 31, 1878, after it was manifest that the resumption acts of January 14, 1875, would be put into successful operation, and the retirement of the greenbacks would begin, as provided, on January 1, 1879, Congress, under the pressure of the inflationists and the silver propagandists, with the support of the Bradley opinion, changed its mind and went back to the re-enacted Thaddeus Stevens act of February 4, 1868, which provided that the greenbacks should be reissued as fast as they were redeemed, that is,—fiat money in an endless chain in time of peace.

* Ante, 52.

† Ante, 147.

‡ Post, 232, 243, 247.

And so we have the "greenback" today, although the Treasury of the United States resumed specie payments on January 1, 1879.

One of the arguments in favor of the Federal Reserve was that it would get rid of the greenbacks. Instead it is an application of the idea back of the greenbacks on a larger scale.

CHAPTER XVIII

SOME INTERESTING LEGAL AND POLITICAL PERSONALITIES

GOVERNOR CONRAD BAKER OF INDIANA—THOMAS A. HENDRICKS
TOO MUCH OF A GREENBACKER FOR TAMMANY AND THE NEW
YORK BANKERS—OSCAR B. HORD—GEORGE WASHINGTON SPAHR
—KINDNESS OF SUPREME COURT JUDGES TO A YOUNG AT-
TORNEY.

IN 1881-2, I was a law student in the office of Baker, Hord & Hendricks, in Indianapolis. During the Civil War this firm had started as Hendricks, Hord & Hendricks. Thomas A. Hendricks was the head, and A. W. Hendricks, a distant relative, was the junior. Colonel Hendricks, the junior, had been a real War Democrat, and for a while a Republican. In some respects he was the best lawyer of them all or of his time. He could write a brief that the stupidest clerk would rather read than a newspaper.

The firm was really double-headed in that it embraced two ex-governors of Indiana, Thomas A. Hendricks and Conrad Baker.

The middle member of the firm, Oscar B. Hord, was a son-in-law of Judge Perkins,* and it was thus that I heard much of that old-line Douglas Democrat whose short opinions† quoted in a previous chapter shows the type of judge in which we are nowadays so deficient.

The first sixty days I was in the office I read just sixty pages

* Ante, 195.

† Ante, 197.

in an elementary law book. But I came in contact with many questions of practice, by copying pleadings, filing them in the offices of the clerks of the courts, running down authorities, in reading proofs of briefs, and like routine work. Also, I heard discussions of constitutional questions and inside history that gave me an insight into the practical workings of government such as is never heard of in the law schools and not even hinted at in the law textbooks, to say nothing of the histories.

Conrad Baker was a native of Pennsylvania and had studied law in the office of Thaddeus Stevens at Chambersburg. Soon after completing his legal education Mr. Baker moved to Evansville, Indiana, to practice law. He volunteered for the war at the beginning and, while colonel of one of the Indiana regiments, in 1864, was elected Lieutenant-Governor of Indiana. In 1868 he defeated Thomas A. Hendricks for governor by a very narrow margin—less than 1600,—although General Grant carried the State by 10,000 majority. One of the political rumors of the time was that Hendricks was counted out and Baker in. Four years later, Mr. Hendricks defeated another Indiana soldier, General Thomas Brown, by 1,000 votes, although General Grant carried Indiana by 20,000 majority. When Hendricks became governor he changed places with Baker, becoming head of the law firm under the name of Baker, Hord & Hendricks.

At the end of his term as governor, when he failed to be elected Vice-President on the Democratic ticket with Samuel J. Tilden of New York, he went back to the law firm, and while the firm name remained Baker, Hord & Hendricks, in the list of individual members, that of Thomas A. Hendricks was at the top. In 1884 Mr. Hendricks was elected Vice-President on the ticket headed by Grover Cleveland. He died in December, 1885. Eighteen months before, lying in his bed, I heard him denounce Doctor David W. Yandell of Louisville for diagnosing an abcess in one of his big toes as gangrene. "It is only a bruise." In a few days he was at the

Chicago Convention, and then went on the stump as the chief speaker for the Cleveland and Hendricks ticket. But his death vindicated Dr. Yandell's diagnosis. So the doctors do sometimes call the turn, although this was the same Doctor Yandell who told my father that his lungs were sound and yet he was bleeding within the hour.*

It was a great treat to the "cubs" when Governor Baker would tell us, as he often delighted to do, about the power and excellence of "Thad" Stevens, and why he, Baker, as a Republican governor of Indiana, with party feeling running high and a lot of deserving Republican patriots "willing" to serve, appointed Samuel E. Perkins† one of the judges of the newly created Superior Court of Marion County: "Perkins as a War Democrat had sustained 'Thad' Stevens' greenbacks, when Governor Hendricks was looking to the Southard. Perkins was an excellent judge but 'on his uppers,' so I appointed him and was glad the Democrats afterwards put him back on the Supreme bench."

As we have shown, "Thad" Stevens was for the greenbacks simply as a war measure. That was Conrad Baker's position. What he would think of the present Federal Reserve system is mere speculation. Thomas A. Hendricks, although a War Democrat,‡ but "with a reservation," as Oscar B. Hord would say, at the time Stevens was whipping the greenback legislation through Congress, wanted to stick to specie payments, but like so many of our financiers changed sides and as a United States senator voted for the act of February 4, 1868,§ to which we have adverted and which has made the greenbacks perpetual in our financial system.

Tammany with all its faults has always been a "sound money" organization and hence it was that Thomas A. Hendricks, in 1876, was forced to take second place to Tammany's "sound money" enemy, Samuel J. Tilden. Claiming,

* Ante, 41.

† Ante, 195-6.

‡ Ante, 135. Post, 200.

§ Ante, 192.

as the Democrats did, that Tilden and Hendricks were elected in 1876, Governor Hendricks said, "Had I been the head there would have been no electoral commission and the votes that elected us would have been counted." He was severe in his strictures on the New York democracy and especially the New York financiers. I heard him denounce them time and again. He refused to play second fiddle to Tilden of New York in 1880, when he declined in advance and warned them he would not accept second place. Had he been what was called a sound money man and opposed to the greenbacks, Tammany and the New York money interests would have been for Hendricks in 1880.

Thomas A. Hendricks undoubtedly had nerve enough, had he been at the head of the democratic organization in 1877, to have precipitated civil strife, and he would have been backed by Henry Watterson's hundred thousand Kentuckians and all the Southern brigadiers, and last and not least, by a lot of ex-Union soldiers who always voted for him. But General Grant, at the head of the government, would have been too much for them. "Marse Henry" himself told me this.

Never a Douglas Democrat, although we have shown Douglas whipped him into line in 1861, Governor Hendricks was a polished gentleman of the old school and the best vote getter who ever went on the hustings. As a member of Congress from the Shelbyville, Indiana, district, he was defeated for re-election to Congress. He attributed his defeat to his vote for Douglas's Kansas-Nebraska Bill. I have heard him say so. He stood in with the Slavocracy as we have shown* until he became the Democratic candidate for governor of Indiana in 1860. His sympathies never were with Douglas. He had been a member of the Indiana Constitutional convention of 1850 and had helped draw Article 13, or the slave clause, which even prohibited free negroes and mulattoes from

* Ante, 127.

coming into the State. Hence it was that as a United States Senator he voted against the submission of the Thirteenth and Fourteenth Amendments—for an entire session he was able to prevent the submission of the Thirteenth Amendment. Carrying such handicaps, his power on the stump is attested by the votes he was able to roll up against good campaigners like Colonel Baker and General Brown. His great strength lay in his advocacy of the personal liberty of the citizen. Temperate in his drinking and abstemious in his eating, had he been a member of the Senate in 1920, the Eighteenth Amendment would have had as hard a time as the Thirteenth did, to reach submission.

"When I went campaigning," Governor Hendricks said, "I always wore my best clothes, took a bath every day, and made better speeches than I ever made to the Supreme Court of the United States. The average man would rather vote for a gentleman than a clown." He enjoyed expounding constitutional, legal, and war measures to the "cubs." Sometimes he would get a little strong against the late Confederate States of America, and then Oscar B. Hord, who was a native of Kentucky and one of the best technical lawyers ever born, who never recanted his secessionist views, would get mad and exclaim, "Governor, you didn't use to talk that way about my native land."

In 1862 Oscar B. Hord had been elected Attorney-General of Indiana, and the Democratic legislature, which had been elected at the same time, in January, 1863, named Thomas A. Hendricks to the United States Senate for six years.

The two men traveled the State together. "Governor Hendricks made word for word the same speech every time," said Mr. Hord. "Before the campaign was half over I could repeat it verbatim." With loyalty as its base, the entire speech was devoted to the legislation which we have shown Senator Trumbull was advocating against President Lincoln's arbitrary and unconstitutional arrests and methods of making war.*

* Ante, 165.

Hendricks prevented his party from becoming an out and out war party, and thus giving up for the time being its basic organization, although always professing allegiance to the soldier. He wrote these planks in the Democratic platform of 1862:

"That liberty of speech and of the press are guaranteed to the people by the Constitution, and none but a usurper would deprive them of these rights; they are inestimable to the citizen and formidable to tyranny. And the attempts which have been made since our present unfortunate trouble, to muzzle the press and stifle free discussion, are exercises of despotic power against which freedom revolts, and which cannot be tolerated without converting freemen into slaves."

"That the total disregard of the writ of *habeas corpus* by the authorities over us and the seizure and imprisonment of the citizens of the loyal states where the judiciary is in full operation, without warrant of law and without assigning any cause or giving the party arrested any opportunity of defense, are flagrant violations of the Constitution, and most alarming acts of usurpation of power, which should receive the stern rebuke of every lover of his country, and of every man who prizes the security and blessings of life, liberty and property."

In those days Oscar B. Hord, the "driving" member, said the main business of the firm was securing the release of good loyal Democrats who were brought to Indianapolis with no grounds whatever for their arrest. "John Hanna, the Republican United States District Attorney, was most considerate and compliant in acquiescing in the release of these men," said Mr. Hord. "Right then and there I got some ideas of constitutional government that afterwards stood me in good stead.*

The elections of the Fall of 1862, and Lyman Trumbull's legal and forensic ability on the floor of the United States Senate, caused Edwin M. Stanton as Secretary of War, and Abraham Lincoln as President, to abandon the arbitrary methods they had been pursuing.†

* Post, 268-272.

† Ante, 168.

But after President Lincoln's assassination Secretary Stanton went back to the military tribunals. Of course they were unconstitutional. All the civil courts were functioning in Washington. Governor Hendricks told us of attending the trials of these conspirators as an observer. He wanted firsthand information.

While he said that some of the defendants or "conspirators" were guilty under the evidence, and others not, and that the conduct of Senator Reverdy Johnson for the defense was admirable, he emphasized the fact that whether in a military or a civil court, in time of war, freedom of thought and speech should not be abridged. Certainly everyone should support the government in time of war, but it was not treason or "obstructing the war" to criticise unconstitutional and ill advised war acts of the government.

Thomas A. Hendricks was a different man from most of the Democrats who came after him. He was opposed to the negro or suffrage amendment, because he was for a white man's government.

Thomas Riley Marshall, the only Indiana Democrat who succeeded to the Vice-Presidency, in an interesting autobiography tells us of the fanaticism, bitterness and oppression visited on Democrats in Indiana during the Civil War. Even the families at home of Democratic soldiers in the Union ranks were subjected to insults by the espionage officers of the government.

Mr. Marshall says that, as Vice President, he sat silent as he saw enacted legislation during the World War that made felonies of acts which it is foolish for any government worthy of the name to even notice.† How different was the conduct of his Democratic predecessor. He not only opposed such legislation but gained his election thereby, meanwhile advocating all over Indiana the legislation or bills introduced into Con-

* Ante, 168.

† Post, 268-272.

gress by Senator Trumbull and passed March 3, 1863, the day Hendricks took the oath of office as a Senator, legislation under whose benign and humane provisions Justice David Davis was able to release Lambden P. Milligan, of whose case we have told in a previous chapter.*

What Senator Robert M. LaFollette said, in opposition to some of President Wilson's war measures, was mild compared to what Senator Hendricks said in opposing the Civil War, and yet Hendricks was never prosecuted or called to account. Instead President Lincoln wisely changed his course, and there was a general jail delivery.

In extenuation of the policy of the Wilson administration, while deprecating the military tribunals of the Civil War, Mr. Marshall says: "In the World War the courts still remained open and men were tried by their orderly processes."

But, as I learned at my father's fireside, "some of the worst tyrannies the world has ever known were maintained under popular forms." The spirit back of the Espionage Acts, aside from that of the alien and sedition laws, and the legislation of Mr. Lincoln that Lyman Trumbull and Thomas A. Hendricks defeated, was that of the dictatorship of President Jefferson Davis.

Sometimes, with the cubs as his sole auditors, apparently, after a beautiful exposition of some legal proposition, which Governor Hendricks pronounced with the greatest solemnity, Oscar B. Hord, in that shrill cutting voice that he could assume when he wanted to goad the opposing lawyer to madness, would interrupt, "Governor, that ain't the law." The blood would mount to the Governor's face, his big neck would swell until it threatened to burst his collar, and he would reply, "If I was a judge, d—d if I wouldn't rule that way anyhow." Then he would get up and walk out of the room. Later on he would come back, and in tones that had seduced many a

* Ante, 169.

Republican vote would ask, "Mr. Hord, just what is the latest decision on that proposition?" and then cordial relations would be resumed.

A trial lawyer par excellence, Oscar B. Hord, the real "driving" member of the firm, always dreaded a contest with Captain Eli Ritter, and with George Washington Spahr, who had graduated as a private at twenty-one after a four-year course in Kilpatrick's cavalry. George Spahr as a trial lawyer asked and gave no quarter. He had a picturesque and a lurid vocabulary. His power of ridicule and invective was unsurpassed. These, his evidence failing, were drawn upon freely, and woe be it to the lawyers on the other side. He was formidable before a jury and could take care of himself in the Supreme Court of the United States. He liked single-handed to encounter the old-established firms. They knew his power and put up their heaviest artillery against him. On one occasion, when General Benjamin Harrison and one of his partners, Wm. H. H. Miller, a most capable lawyer and afterwards Attorney-General, were trying a case against him, Spahr opened up on "Big Man Ben" and "Little Man Miller" and secured the verdict. On a previous occasion General Harrison had encountered him alone and had been badly beaten.

Captain Ritter and George Spahr brought many damage suits against the Indianapolis, Peru and Chicago, the "Big Four," and the Pennsylvania Railroad Companies, clients of Baker, Hord & Hendricks. After a vigorous assault on cross-examination of Mr. Spahr's witness or client, Oscar B. Hord would propose terms that would be accepted. He would never if he could prevent it, let George have the closing argument. Sometimes, when the verdict would be smaller than was expected, and the railroad managers would demand an appeal, Hord would say, "Lord, no! Should you reverse this case Spahr or Ritter will treble or quadruple his damages next time."

As a small boy I had met George Washington Spahr in my father's courtroom. I was taken with him, and our mutually

cordial feeling lasted to his death. In 1884 I happened one morning to be in my father's office in the Post Office Department in Washington when George breezed in. He was dressed up like a congressman in a "plug hat" and long-tailed "Prince Albert" coat, the kind it was then the etiquette for counsel to wear when appearing in the Supreme Court of the United States. He did not have to press me to go with him to the Supreme Court to hear an oral argument he was to make. As we walked along he confided to me, in strong language, "If old Miller undertakes to heckle me, I will show him where to head in."

Spahr's case was the first on the call and soon Associate Justice Miller was after him with question after question. Every Justice knew him and was alert, but left it all to Justice Miller and Brother Spahr. Manifestly the other members of the court enjoyed the bout. Finally Spahr in crushing tones said, "If Your Honor will let me go on in my own way you will know a heap more about this lawsuit when I git through than if you continually keep on interrupting the thread of my argument with these irrelevant and incompetent questions." All the other Justices laughed and looked at Justice Miller, who became confused and said not another word, while Brother Spahr was accorded his full time without another interruption. While Mr. Spahr was given much praise for having silenced Justice Miller it even then seemed to me as a novice, and it is still my conviction, that a lawyer should answer the questions from the bench. Not only is this true in the practice of law but in every other vocation of life, unless one would plead his privilege which is after all a confession of guilt.

There was much talk in those days about lawyers being "beaten down" by questions from men on the bench of the Supreme Court of the United States. At that time two hours were allowed for argument on each side. While my father was in President Arthur's cabinet we were next-door neighbors of Chief Justice Waite. In those days, I often listened for

hours to oral arguments in the Supreme Court. Often it seemed to me that the lawyer was determined to consume his entire time even though his case had been "hung" in the first fifteen minutes of his talk. Then the lawyer should be cut down, but to cut him down at the beginning is a mistake for many an otherwise well-equipped lawyer is without a good selfstarter. It always seemed to me that great consideration and forbearance was exercised by the members of the court in listening to long-winded and stupid arguments. Indeed, sometimes a helping hand was extended to a lawyer. I can testify to that from personal experience.

The first time that I was before the Supreme Court of the United States, April 5 and 6, 1899, Judge Harlan was one of the leading members of that court. I was a good deal rattled at the hurdle which had been put in my way in the shape of the decision which had been given by that court in the "Sugar Trust" case (January 21, 1896)—the first Anti-Trust case to come before the Supreme Court. In that decision the Supreme Court had "practically" dispensed the Anti-Trust or the Sherman Act of 1890. For my clients to win—to defeat the foreclosure of a mortgage on thirty-nine paper mills constituting part of the "Paper Mill Trust,"—it was necessary for the act to be construed as written, namely, "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal." Having made a "practical" construction of the act, I feared they would say, "All further discussion is foreclosed." But up to that time they had not written the word "reasonable" into the Sherman Act.

Although Senator Hoar of Massachusetts intervened to help draft this act, he failed to get in it the word "reasonable" before "restraint of trade." Senator John Sherman, its author, was implacable and had presented a more drastic draft. He had the advice of practical business men who said that there

is no such thing as "reasonable" restraint of trade—in other words, all restraints of trade are unreasonable.

Getting back to my own case, my tongue dry as a bone and "sticking to the roof of my mouth," I was just on the point of giving up,—all the Judges apparently engrossed in reading the record,—when Justice George Shiras, the man who changed sides in the Income Tax case, asked me a question and gave an affirmative nod of his head to my answer, and then Justice Harlan followed with a couple of questions that concentrated my mind on the case, the salivary glands went to work, the other Justices seemed receptive, and I dug into "reasonable restraint of trade,"—the English doctrine from which our forefathers had revolted as being in violation of the American Doctrine as finally embodied in the Anti-Trust Act, and into Samuel Untermyer and the trust companies that helped promoters violate the law,—in a way that made the Court react in an opinion, by Justice Brown, which handled Brother Untermyer and some Chicago lawyers, a trust company, and promoters and combiners in general, without reserve.

Mr. Untermyer, the Chicago lawyers, and the Trust Company, after a time got the opinion recalled and the names of all the lawyers eliminated from the opinion except that of Samuel Untermyer. Justice Brown was adamant to all efforts to eliminate Mr. Untermyer's name, and used this language in sustaining his position :*

"A list of the parties to whom the bonds were delivered by the Northern Trust Company upon the request of the Straw Paper Company shows that nearly all the bonds, \$800,000, were originally issued to Samuel Untermyer, Philo D. Beard, John B. Hood, to members of the Chicago firm, and others more or less connected with the organization of the company."

He followed this up with the statement that it was a fraud to organize the Straw Paper Company with only thirty-nine

* Ante, 178. U. S., *Dickerman vs. Northern Trust Company*, page 202.

of the mills, leaving out thirty-one competing mills that the promoters had promised to take into the combination. It took only \$2,788,000 in cash and \$2,022,000 in stock, to acquire the thirty-nine mills, and the balance, \$2,212,000, of the authorized stock of the Paper Company the promoters appropriated to their own use without putting a dollar therefor into the treasury of the company. In addition to our claim that the mortgage which had been executed to secure the bonds, and which was being foreclosed, was void as being a step in violation of the Sherman Anti-Trust Act, we also claimed that, waiving this, the liability of the promoters, one of whom was Mr. Untermeyer, for their unpaid stock, should be set off against the indebtedness the company owed them on the bonds. But a few, at least, of the bonds had got into the hands of "innocent holders without notice for value." This we did not deny.

The case was not decided for almost a year after the argument, namely, January 22, 1900, an unusually long time for a decision in such a case. On our side the argument was closed by a lawyer of great ability and long experience, and he had the closest attention from every member of the court.

An old lawyer who heard my argument said, "Young fellow, the Judges were mighty nice to you. They only asked you those questions to start you." Then I concluded that "the innocent holders without notice for value" would not win, but the old lawyers who were steering the lawsuit said they would. They believed the court would declare every contract, deed, mortgage, or bond, in furtherance of a combination in restraint of trade and commerce invalid. That there was fraud in the organization of the Columbia Straw Paper Company, Justice Brown elaborately set forth in his opinion; but it appeared that possibly a few of the bonds might have got into the hands of innocent holders without notice, and consequently the court held it could not declare the entire issue void. What crimes have been committed under cover of the innocent holders or the widows and orphans who are being robbed.

About the time the Dickerman case was decided, the Supreme Court of Illinois, in a case not entirely dissimilar, involving the organization of an industrial trust,* laid bare the names of the lawyers, the trust company that was the stakeholder, and letters and telegrams in the greatest detail, then held that every step, the deeds, the mortgage, and the bonds, in the organization of an industrial trust were void.

* *Harding vs. American Glucose Co.*, 182, 11. 551.

CHAPTER XIX

LEGAL TENDERS OR "GREENBACKS" SUSTAINED IN TIME OF PEACE

CRITICISM OF JUSTICE GRAY'S OPINION IN THE JULLIARD CASE—
MAJOR MCKINLEY TURNS TO "SOUND MONEY"—THE MCKINLEY
TARIFF BILL—THE SILVER BILL PASSED AS THE SHERMAN
ACT—DOES NOT SATISFY THE ADVOCATES OF UNLIMITED COIN-
AGE AT THE RATIO OF "16 TO 1"—THE MONEY PANIC OF '93—
REPEAL OF THE SHERMAN SILVER ACT.

IN 1884, the case of *Julliard vs. Greenman*, appealed from the United States District Court in New York, was decided by the United States Supreme Court. Julliard had sold to Greenman a hundred bales of cotton for the sum of \$5,122.90. In payment, Greenman tendered Julliard \$5,100 in greenbacks, and for the balance; \$22.50 in gold and 40 cents in silver. Julliard refused the tender, claiming that the greenbacks were not legal money, and that the act of May 31, 1878,* was unconstitutional. Both the District and Supreme Courts of the United States held the tender good, and the act of May 31, 1878, constitutional.†

The Julliard case was decided March 3, 1884—I was a law student in Washington at the time, and on the side reading proof for the reporter of the Supreme Court, Wm. T. Otto. Two days later, a Cabinet dinner was given by my father to President Arthur, at which there were also present Justice Blatchford and Justice Gray, who had written the Julliard

* Ante, 53, 214.

† Ante, 110. U. S. 420.

opinion. Both Blatchford and Gray were appointees of President Arthur.

Justice Gray's opinion was criticised unmercifully. George Bancroft, the historian, was present and he took a hand and praised Justice Field's dissenting opinion. Both Blatchford and Gray were greatly startled and surprised at the onslaught. But it remained for William E. Chandler, the Secretary of the Navy, to administer the strongest blow in answer to their claims, when he said that while the monarchs of Europe had possessed the power from time immemorial to debase the coin of the realm and make paper money a legal tender, that was what the Fathers of the Republic had effectually guarded against.* My father quoted the statement of Senator John P. Jones of Nevada in the debate on the "Inflation Bill," that the greenbacks had made the Civil War cost three times what it should have cost.† A long discussion of the money question and the powers of government followed, that went on to a late hour.

Benjamin F. Brewster, the Philadelphia lawyer of his day, was Attorney-General. President Arthur's adult life had been passed in New York. The business interests were back of him. It was manifest from what the Attorney-General and the President said, that Samuel Blatchford, who came from New York City, and George Gray, who came from Boston, would not have been members of the Supreme Court of the United States at Chester A. Arthur's hands had he known what their views would have been on the greenbacks or the money question. Justice Bradley would probably have had almost anybody else appointed, to agree with him. But no matter the class of men appointed the decision would have been the same. Justice Harlan,‡ who had denounced the greenbacks from the stump in Kentucky in '63 and '64, as a member of the court in March, 1884, voted to sustain them in time of peace. As an exposition of the inflation idea, Gray's opinion in no wise compares with Bradley's in the Legal Tender Cases.

* Ante, 29, 147, 152.

† Ante, 15.

‡ Ante, 34.

During the time my father was a member of President Arthur's cabinet, William McKinley was a member of Congress from the Canton, Ohio, district, and I met him at my father's house. I heard the debate which led to McKinley's unseating as a member of Congress. It was then regarded as a partisan decision. He had been elected on the face of the returns, by a bare majority of nine votes, but in a Democratic district of three thousand five hundred. Afterwards I met him at conventions, and on many occasions in this office, while he was Governor of Ohio and preceding his nomination for the presidency in 1896. He belonged to the extreme high tariff wing of the Republican party. My father was a moderate and was for a reduction of the tariff, as was President Arthur. Major McKinley always had a kindly message for my father, and on the soldier side their relations were most cordial.

Most of the publicists and historians rate McKinley as an inflationist. He said he believed in "the money of our Saviour and of the Constitution." He had been one of those who, over President Hayes' veto, in 1878, had voted for the Bland-Allison Bill.* Major McKinley was a speculator, and while there is not much in history about it, he was unfortunate in his speculations and piled up debts of half a million dollars, which his business and political friends, men who believed in the single gold standard, liquidated.

While McKinley's biographers admit that he was an inflationist, they claim that after he "saw the light," which was subsequent to his nomination in 1896, he turned to "sound" money. My own view is that it was a political change rather than a change of conviction, and that Philip D. Armour, Samuel W. Allerton, Herman Kohlsaas, Marcus A. Hanna, Thomas Collier Platt, Charles Warren Fairbanks, and Grover Cleveland were the five men of all others who brought about that change.† The essence of politics and government is compromise, says Macaulay. It does not matter if a minor premise fails to conform to the major, and neither to the conclusion, if

* Ante, 214.

† Post, 247.

all three combined get votes, is the great historian's justification. This is one of the inefficiencies of government. But there is a different order coming, and we have shown Lyman Trumbull to be a sample of this new class.

In the dog-days of 1890, McKinley put through the House of Representatives the Tariff Bill which bears his name. The limited monthly coinage of silver under the Bland-Allison Bill, \$2,000,000, the last opinion of the Supreme Court upholding the validity of the "greenbacks," the increase in the production of silver and the decrease in the production of gold, the increase in trade, commerce and population, all were factors that had brought back the demand for more money. "Silver Dick" Bland and William B. Allison, collaborators of the Bland-Allison Bill, were still active at Washington, Bland in the House of Representatives and Allison in the Senate, where he was continuing to advocate the use of silver as money.

Pending in the House, as the McKinley Tariff Bill went to the Senate, was a bill for the free and unlimited coinage of silver at the ratio of 16 to 1 with gold, and with the McKinley Bill there went to the Senate a Force Bill backed by President Harrison designed to secured the ballot to the negroes in the South.

The Republican majority in the Senate was scant. The Democrats, led by Senator Vest of Missouri, served notice that they would talk the McKinley and Force Bills to death, filibustering if necessary until the end of the session. Whereupon Senator Quay came to terms with Senator Vest and agreed that if the Democrats would quit talking and let them vote, Quay would deliver enough votes to defeat the Force Bill. The agreement involved no obligation on the part of any Democrat to do anything else than allow a vote on the McKinley Bill. The Democrats were practically all for the free coinage of silver, that is, at the ratio of 16 to 1.

The Force Bill was killed. Three Republican senators from the West voted against it. As the time approached for a vote

on the McKinley Bill, Senators Teller and Wolcott of Colorado, both Republicans, stepped forward and said, "The silver of Colorado and the other Rocky Mountain States is entitled to as much consideration as the iron of Pennsylvania, and unless provision is made for an increase in the coinage of silver we shall vote against the McKinley Bill."

Thereupon the silver bill in the House was whipped into shape and passed as the Sherman Act. The act was signed October 10, 1890. It provided that the Government should purchase 4,500,000 ounces of silver per month and coin it into silver dollars, issuing silver certificates against these silver dollars. Many Democratic senators—Daniel W. Voorhees of Indiana was one—voted against it, because it did not give them enough silver, that is, provide for the unlimited coinage of silver, at the ratio of 16 to 1. The fact is, it was too big a dose for the patient to swallow,—too much inflation.

It was predicted that the Sherman Act would bring on a panic. Grover Cleveland, then out of office, was one of the statesmen who denounced the act as a mistake.

When Cleveland was inaugurated President the second time, in March, 1893, that predicted panic was on and silver dollars were worth about 62 cents in gold. The per annum coinage under the Sherman Act—which displaced the Bland-Allison Act—was double that under the latter act, under which, in thirteen years, 260,000,000 silver dollars had been coined, while, as we have previously stated, only 10,000,000 altogether had been coined in the entire history of the government prior to 1878. In round numbers, 400,000,000 silver dollars were then outstanding, that is, in 1893. Speculators in New York, Chicago and London were selling bonds, stocks and grain short, and covering as the market declined. An old fellow from Kansas said, "Wall Street is using the greenbacks to jerk what little gold is left in the Treasury out of her."

Be it remembered that the act of May 31, 1878, provided that as the greenbacks were redeemed by the Treasury of the

United States, they should be re-issued immediately as new bills. It was thus that they produced an endless chain, and rendered it impossible for the government to retain a surplus of gold should the speculators use the chain to the limit. By a system of administration and credit the fiction of the gold standard is thus preserved. Manifestly this is so, since the inflation of the World War, which will be considered in due order. In 1893, men and corporations whose obligations were payable in gold coin were bound to suffer as soon as the Government ceased to pay its obligations in gold, which time was predicted as not far off. Secretary of the Treasury Foster printed bonds under the authority of the Resumption Acts, to buy gold with which to keep up the "gold reserve" of at least \$100,000,000, but President Harrison would not allow these bonds to be sold.

It was a case of too much silver. At the same time, it was recognized that the expansion of industry and commerce required an increasing circulating medium. Even the single-standard gold men admitted this.

My father had publicly changed sides and voted for Grover Cleveland in 1892.* He became his Secretary of State in March, 1893. It took practically all the power of the second Cleveland administration to repeal the Sherman Act as a step to stop the panic. This was followed up by using some of the bonds printed by Harrison's Secretary of the Treasury, to buy gold from the New York bankers (at a good premium) with which to replenish the gold reserve which was then down to \$50,000,000.

In urging these and other measures of Grover Cleveland's, Henry James says that Walter Q. Gresham was actuated by his personal feelings against Benjamin Harrison.† Mr. James is entitled to draw his own conclusions, but it either convicts him of that personal feeling that he says was Secretary Gresham's inspiration in voting against Harrison, or Mr. James is lacking in the first conception of what constitutes statesmanship. Hav-

* Post, 243.

† Ante, 2.

ing voted against General Harrison because of opposition to his financial tariff and foreign policies, it is absurd for a publicist to say that Walter Q. Gresham in Grover Cleveland's cabinet should have stood by what he had proclaimed to the world he was against, and always was against. It was a lack of executive capacity on President Harrison's part.* He was a "sound money" man but he signed the Sherman Act after the silver men had ripped open his doll baby of a Force Bill and scattered her sawdust to the winds. He was opposed to McKinley's tariff bill but signed it.

Some of the silver men voted for the repeal of the Sherman Act, saying that they had originally voted against its passage because it had not provided for enough silver. What they wanted was the free and unlimited coinage of silver, that is, at 16 to 1, and they said they would get it. Senator Voorhees, a Democrat, Chairman of the Finance Committee of the Senate, in reporting a bill for the repeal of the Sherman Act, affirmed this and chided Republicans like Senators Aldrich, Hoar, Allison and Teller for being only "half-baked" silver men.

And so it was said that the administration, in pressing for the repeal of the Sherman Act, was not *per se* hostile to silver as money, indeed, that very statement was made on Cleveland's behalf by a member of his cabinet, namely, J. Sterling Morton.

When President Cleveland vetoed the bill to coin all silver bullion remaining in the Treasury after the repeal of the Sherman Act, on the basis of 16 to 1, this bullion then aggregating \$9,000,000 at its commercial value and \$18,000,000 as legal tenders, most of the Democrats turned against him—the Silver Democrats to a man.

My father was one of the cabinet members who represented the administration in dealing with Senator Voorhees. He urged him as Chairman of the Finance Committee to report the bill for the repeal of the Sherman Act, and he advised President Cleveland to sign the bill for the coinage of the

* Ante, 2.

bullion,—“to get the silver bullion out of the Treasury, where it is a continual bail to the silver men.”

President Cleveland not only vetoed the bill but declared he would drive them to the single gold standard.* My father said to him, “You can’t do this. They will take your organization from you and with the Silver Republicans put the country on a silver basis.” His argument was that eighteen millions of silver certificates, added to the existing currency, against which there was a value of at least fifty per cent, would not disturb the gold standard, for the increased production of gold which would come about (and did come about) would furnish an ample basis for the increase in the circulating medium. From the time of the resumption of specie payment, July, 1879, \$100,000,000 in gold in the Treasury was considered enough to insure the preservation of that condition. Against this, in addition to the \$350,000,000 of greenbacks, were the National Bank notes of over \$600,000,000. Certainly the government of the United States could not, without the \$18,000,000 of silver certificates added to the currency, pay dollar for dollar if called. It was only the bone and sinew of the country that could do that. The greenbacks would continue to be the great menace to the maintenance of the gold standard.

When 1896 came, the silver men were stronger in a political sense than ever before. The Democrats as an organization had almost become a silver party. The Southern men in Congress cursed Grover Cleveland in private with all the violence of which language is capable. The Republicans in Colorado and the Mountain States were silver men *per se*, and William McKinley, who was leading the presidential race on the Republican side, had recanted none of his silver views.

* Post, 246-250.

CHAPTER XX

CLEVELAND'S SILVER VIEWS AND THE CAMPAIGN OF 1896

CONVERSATION WITH PRESIDENT CLEVELAND—POSITION OF THE INDIANA DEMOCRATS—CLEVELAND AGAINST FREE COINAGE AT RATIO OF 16 TO 1—"TOM" TAGGART BOLTS BRYAN—CHARLES W. FAIRBANKS—DRAFTS HIS SPEECH AS CHAIRMAN OF THE ST. LOUIS REPUBLICAN CONVENTION—"STRADDLES" THE SILVER QUESTION—FAIRBANKS' CHARACTERISTICS AS A FINANCIER—ADVISED TO CHANGE HIS SPEECH—SPEECH AS FINALLY DELIVERED "SOUND ON MONEY QUESTION"—BRYAN NOMINATED—AN INCIDENT OF THE CAMPAIGN—SENATOR HANNA AND "PHIL" ARMOUR.

MY father died in May, 1895, while Secretary of State in President Cleveland's cabinet. It was finally decided by my mother that he should be buried in Arlington Cemetery, and upon writing her wishes to the President, he and Secretary of War Lamont arranged for the desired lot, and in the last of May, 1896, we took the remains to Washington and held a private funeral, with only President Cleveland and the cabinet members present.

My own idea was, that as my father had opposed "twisting the lion's tail," that is, had opposed Cleveland's and Secretary Olney's plan of handling the Venezuelan incident, he should have been buried in some other than a soldier's cemetery. He was one of the early advocates of arbitration for the settlement of international differences. But as he had wound up his

service of three years in the field with a wound that ultimately cost him his life, the absurdity of burying him in a soldier's cemetery is not so incongruous as that of "the Prince of Peace."

We stayed in Washington several days. On a visit to "Woodley,"* President Cleveland's country home, in response to his invitation, he took me into the library and there expounded to me the silver question from the practical side, my mother remaining in the meantime with Mrs. Cleveland. At my first meeting with Mr. Cleveland, he had assumed a paternal air that was pleasing, and apparently felt on that occasion that he could talk to me without reserve. At any rate, he did. "I have made mistakes in dealing with party men, in things I have written and said, but you must not tell anyone that I have said this."

I had previously sent to him, through his private secretary, the opinion of John E. Lamb, Senator Voorhees' old law partner, that they perhaps would not be able to stop the silver movement, but that it was not a wise one. He was surprised and gratified at Mr. Lamb's views and the views of other Indiana Democrats, like "Tom" Taggart, Hugh Dougherty, A. G. Smith, Frank B. Burke and John W. Kern. He knew them all and knew all about their political activities. Dougherty was a banker, the others were lawyers. He said he supposed Lamb would be with Senator Voorhees. "If Voorhees was for sawdust, my guess would be that Lamb would be for sawdust."

Mr. Cleveland's exposition of the silver question was sound from a financial and commercial standpoint—"that the commercialism of the world was based on gold and silver but that the increased production in silver had demonetized it without authority of an Act of Congress." Of course, if God Almighty, as we quote Hugh McCullough, had made gold and silver to be used as money, the world financiers were getting just a little bit irreverent in 1896. "There would be embar-

* Ante, 248.

rassment if the production of gold slackened." Afterwards he was able to point to the increase in the gold output in Colorado, in Alaska, and in South Africa, as justifying the gold standard. Grover Cleveland was the only statesman of that time who was a Simon-pure single-gold-standard man.

And further along Mr. Cleveland said that the laboring man and the business man, whether Democrat or Republican, in the final test would be against the free and unlimited coinage of silver at the ratio of 16 to 1. It was no longer a question of coining that silver seniorage of only nine million dollars. He spoke of many men in the Republican Party who were silver men, but did not refer by name to Major McKinley, the Governor of Ohio, who was then supposed to have a majority of the delegates to the next Republican Convention.

At that time Ex-Senator Platt, the Republican "boss" of New York and a gold standard man, was making every effort to stem the silver and McKinley tide in the Republican Party. Speaker Reed was the next leading Republican candidate and was regarded as a "sound money" man, and he had Mr. Cleveland's sympathy. President Cleveland's concluding statement was, that if the Democrats adopted a free silver platform, that is, at the ratio of 16 to 1, and the Republicans straddled, silver would win because no "sound money" Democrat would vote for a Silver Republican for President and the Silver Republicans would vote for a 16 to 1 man, regardless of party ties. In short, the silver men were not disposed to wait for an international agreement to change the financial system of the world. America should lead. "Tell the boys that silver, at 16 to 1, will not win," were his final words to me.

At this interview I said, "Mr. President, I wanted my father buried out in Illinois, but it is my mother's wish that he be buried in Arlington." His answer was, "It doesn't matter much where a man is buried." I then said, "You may not know that it has been a subject of concern with us as to whether

the doctors will steal the body to get a look at that left limb.* I wanted an autopsy and thus let them see it but my mother would not consent. I know they haven't got the body yet." To this he replied, "Just leave that to me. They will never get it." I said not another word, and mentioned the subject to no one else, not even Secretary of War Lamont.

I could get no rise out of him about a third term, and I was convinced that, so far as that matter was concerned, he was too practical a man to consider it. I mention this because "Marse Henry" and others said that at that time Grover Cleveland was figuring on a third term.

I liked Grover Cleveland as I have liked few public men. He was of extraordinary force of character and personality. I left him not only in absolute sympathy, but satisfied that as a matter of expediency as well as duty, he was going to do everything he could to defeat the "16 to 1" silver propaganda. That he would bolt his party, if necessary, was my conviction. The question of whether he would be able to swallow McKinley's money views as well as his views on the tariff was a problem. The result shows he did not. That very afternoon I went up to the Capitol—Congress was in session,—and hunted up Congressman Walter Evans of Kentucky, one of the Reed leaders, and told him of Cleveland's attitude, and that he would undoubtedly support Reed on a sound money platform, for he, Cleveland, figured the Democrats would go for "Silver Dick" and free silver, and that some of the "Easy Boss"† propaganda was having a different effect in the West from what was intended,—it was helping McKinley and hurting Reed. Colonel Evans said, "I will go right now and see Reed."

On my way back to Chicago with my mother, we stopped at Indianapolis. There I saw a number of leading Indiana Democrats, Thomas Taggart, John W. Kern, Alonzo Green Smith, then Attorney-General of Indiana, Frank B. Burke,

* Ante, 34-41.

† Ex-Senator Platt, 240.

United States District Attorney, and others whom I had quoted to President Cleveland as being opposed to silver at 16 to 1.

When I met Taggart on the street, I said, without realizing the import of my words, "Tom, I have been to Washington and the Big Chief has been talking about you." The words had hardly left my mouth before I saw their effect on Brother Taggart. Should he ever see this, I hope he will pardon me for now saying that he "swelled up big." I gave him an outline of Cleveland's views. Taggart was a man of affairs in business and I don't think he ever was in cordial sympathy with Mr. Bryan after he was nominated, although he preserved his "regularity." I talked to the other gentlemen named, and remembering the effect that my mention of Cleveland had had on Taggart, I did not in any wise decrease the President's reference to each individual as I followed them up. All of these men opposed the 16 to 1 propaganda, but subsequently became "regulars." Kern was the vice-presidential candidate with Bryan in 1900, and afterwards Bryan's representative in the United States Senate.

After leaving my Democratic friends, I called on Charles W. Fairbanks, afterwards Senator and Vice-President. I had worked under him for several years as an attorney on the system of railroads running from Columbus, Ohio, to Peoria, Illinois, and from Sandusky to Dayton and Springfield, Ohio, down to the Ohio River. Once we spent a week together in Canton, Ohio, Major McKinley's home town, contesting a stockholders' election of the Cleveland & Canton Railroad Company. William R. Day, afterwards Justice of the Supreme Court of the United States, by President McKinley's appointment, was our local representative.

As a trial lawyer Fairbanks had no superior. With a railroad corporation as a defendant he won lawsuit after lawsuit before a country and city jury with the best trial lawyers against him, and that, too, often after an almost sleepless night in an ordinary coach, for not all trains carried sleeping cars in

those days. Temperate in eating and drinking—he did not use tobacco,—he never seemed to be fatigued. He was a master of his profession and knew every detail of the construction and operation of a railroad. On the executive side he was *par excellence*. He was not a politician, and consequently when he played politics he was not that success that his legal and executive capacity gained him in law and business.

Mr. Fairbanks was one of my father's intimate friends. He was then a candidate for United States Senator and was elected the following January. My father first suggested that he be a candidate for the Senate. Governor McKinley promptly seconded the motion. As "Marse Henry" Watterson would say, the relations between William McKinley and Benjamin Harrison were never "homogeneous."

In 1884, when Blaine and Cleveland were the leading candidates and the "Mugwumps" defeated Blaine by throwing their votes to Cleveland, Fairbanks avowed his sympathy with the "Mugwumps" and reluctantly voted for Blaine. He had not a word of criticism of my father for voting for Cleveland in 1892.*

After the greetings, Mr. Fairbanks said, "McKinley has requested that I be the temporary chairman of the St. Louis Convention, and make the opening speech. I have written my speech and want to read it to you." By that time it was known that McKinley had a majority of the delegates. Changes sometimes come very fast in the views of men after they are elected delegates to a political convention. I heard one practical man say they often changed over night.

Mr. Fairbanks read his speech to me. It was one of the best straddles of the silver question ever written. He had been reading McKinley's speeches and he quoted from them in favor of the Bland-Allison Act.† It is said that he had written the platform of the Indiana Republican State Convention as a sound money platform but it conforms to Major McKinley's silver views. This platform tends at least to show the line of

* Ante, 235.

† Ante, 214.

Fairbanks' speech. It certainly is not a single standard, gold platform.*

After Fairbanks had finished reading his speech, he asked me what I thought of it. I told him it would not do at all. As a trial lawyer under him I had for years been given the widest latitude. In discussing what to do I never hesitated to press my views and he almost invariably let me take the course I desired. We argued out the financial and legal phases of the silver question.

Fairbanks, as I well knew, was a "sound money" man *per se*. It was only on the political side that he was going to make that silver speech in the nominating convention for the man he was supporting for president. He was a rich man and a speculator, but as a speculator he differed from William McKinley† in that he was more often successful than unsuccessful. He always had a good big balance somewhere to draw on. And because he did not always tell where that balance was, men like Senator Beveridge and the rating agencies like Bradstreet's would say he was "broke," when that was just what Fairbanks wanted the public, or the politicians who were shaking him down for a big campaign contribution, to believe. But at that he was liberal when it came to campaigns.

After I had an office of my own, V. T. Malott, the president of the Indiana National Bank, came to me with notes aggregating one hundred thousand dollars of Fairbanks' to collect. I said to him, "You don't need a lawyer. He can pay it, or secure it many times over in good collateral. Go tell him I say so, and then if we can't get a rise we can have a lawsuit." For personal reasons, I did not want to sue Charles Warren Fairbanks, and it was not necessary. Besides, as a friend of

* The Indiana State Republican platform adopted May 2, 1896:

"We are firm and emphatic in our demand for honest money. We believe that our money should not be inferior to the money of the most enlightened nations of the earth.

"We are utterly opposed to any scheme that threatens to debase or depreciate our currency.

"We favor the use of silver as currency, but to the extent only and under such regulations that its parity with gold can be maintained; and in consequence are opposed to the free unlimited and independent coinage of silver at a ratio of 16 to 1."

† Ante, 232.

Malott's, I did not want people to say that Malott's bank had loaned Fairbanks too much money. However, Malott got his money and I didn't get any fee, and Fairbanks was not ungrateful.

In my argument against his silver speech I adverted to McKinley's financial heresies and his inability to preserve a balance, and urged Fairbanks to use his own views and judgment. Situated as we then were, I urged that for the present the gold standard was the only thing for the civilization of the world. I said it was his duty, envired as he was and entertaining the conviction that he did, to start them right.

"You have nothing to fear from the politicians, but on the contrary they, including McKinley, will follow you. You've got the pole start of them," I said, "but if you make that speech some of those New York bankers will call you on those gold notes requiring payment in gold of a 'certain weight and fineness'."

It made no impression. The fact is, Fairbanks had no fear of nor much consideration for the bankers, and threats to sell his collateral never got anywhere. He even surpassed Charles W. Yerkes, the Chicago street car magnate, in handling the banker. One day a committee of the associated banks of Chicago called Yerkes in and said, "Mr. Yerkes, we have decided to sell your collateral." "Go to it," said Yerkes, "I have tried to do it many times myself and failed."

To be specific, I know of an instance where Fairbanks had borrowed fifty per cent on a certain issue of bonds which he claimed were worth eighty. The corporation which issued them was paying its interest regularly. But the banker became dissatisfied and then alarmed, and finally wanted Fairbanks to take up the loan. He refused. Then the banker threatened to sell the bonds. "Go ahead," said Fairbanks. The banker then, through a broker, offered the bonds to Fairbanks himself. Fairbanks bid forty. No other banker would touch them and the dissatisfied banker had to be content. Fairbanks subse-

quently sold them for ninety and of course the banker got his money.

The thought went through my mind that Fairbanks had planned to do business whether it was gold or silver money in the future. A short time before I had heard another Fairbanks—no relative of Charles W.—Crawford Fairbanks, a manufacturer, a business, a trust magnate, a wet of the wettest, if you please, say, “They won’t be able to put me out of business by raising or lowering values whether it be on a gold or a silver basis. I am prepared to do business at that old stand with any kind of money.” So I went at Charles W. from another angle.

I said to him, “You know I have just been down to Washington to bury my father. I saw President Cleveland, and he was most sympathetic and confidential about matters of a personal nature, but what is more, and what concerns you, is that he took me into his library out at Woodley and for two hours expounded this silver question to me from the political side. It is not necessary for me to go over his line of argument, but this I want you to consider. He said, ‘The Democrats are going to adopt a silver platform, 16 to 1.’ This will put Cleveland out of the Democratic party. If, as the President said to me, the Republicans straddle, they will lose because the silver Republicans will go to 16 to 1, while the ‘sound money’ Democrats in the East, and New England is full of them, are not going to vote for a Republican on a silver or equivocal platform.

“Now you have enough perception to understand that if I have clearly detailed to you Mr. Cleveland’s views, and I tell you he has talked to me as freely as my father ever did, he has got to flock by himself or bolt. The Southern men curse him like a pirate.* He may bolt to your side provided you give him something to bolt to. Give him something. The Silver Republicans will leave you if you straddle and go to the Silver Democrats, so the only chance for you to win is to get in on

* Ante, 237.

a 'sound money' platform of the Grover Cleveland kind, the single gold standard."

Mr. Fairbanks at once said, "Yes, I see it. I will tear this speech up and write another," and then and there he tore it up.

I think the record will disclose that Mr. Fairbanks' speech at the St. Louis Convention was a "sound money" speech. Senators Teller and Dubois and the Silver Republicans walked out as the platform* was adopted. The speech was in accordance with it. But neither went as far as Cleveland and the bankers wanted them to do, nor so far as Major McKinley subsequently went on the stump when the contest got hot, and Bryan was pressing for America to take the lead for silver without waiting for the consent of any other nation.

Cleveland was right. Bryan would have beaten McKinley on the platform in 1896. His argument was unanswerable. "You say in your platform you are for silver. Why, then, wait for an international agreement?" But at that there was a great controversy as to who was the author of the St. Louis platform that year. On behalf of C. C. Kohlsaas of Chicago the claim is advanced, but Senators Platt and Hanna are generally given the credit. I give it to Fairbanks.

Later on, the Democratic Convention met at Chicago and I sat on the platform and heard William Jennings Bryan's "Crown of Thorns and Cross of Gold" speech, advocating unlimited coinage of silver, at the ratio of 16 to 1, without waiting for the consent of any other nation.

Up to that time old "Silver Dick" Bland† had been the

* National money plank of the Republican Party, 1896:

"The Republican Party is unreservedly for sound money. It caused the enactment of a law providing for the resumption of specie payments in 1879. Since then every dollar has been as good as gold. We are unalterably opposed to any measure calculated to debase our currency or impair the credit of our country. We are therefore opposed to the free coinage of silver, except by international agreement with the leading commercial nations of the earth, which agreement we pledge ourselves to promote, and until such agreement can be obtained the existing gold standard must be maintained. All of our silver and paper currency must be maintained at parity with gold, and we favor all measures designed to maintain inviolate the obligations of the United States, of all our money, whether coin or paper, at the present standard, the standard of the most enlightened nations of the earth."

† Ante, 214.

leading Democratic candidate for President, with a majority of the delegates, but right then and there the switch was made. State after State planted its banner alongside of the Nebraska standard until two-thirds of the convention was represented. John E. Lamb with drawn face stood holding on to the Indiana banner while the other Indiana delegates sat mute in their places. "He is nominated without a roll call," was the cry.

Realizing the force and effect of Bryan's speech, my mind reverted to what Mr. Cleveland had said to me at Woodley,* and also to the only practical answer to make. To my mother and Mrs. Potter Palmer, who sat beside me, I said, "Uncle Grover will pull the 'sound money' men out after there is a roll call on the platform. They will bolt as soon as they vote on the platform." The debate was then on, on the Majority and Minority Report of the Committee on Resolutions. Cleveland did not attempt to pull them out, but that night, after the convention adjourned, I learned that Tammany was willing "to go out" but that the other New Yorkers and the New Englanders—men like William E. Whitney and Governor Russell of Massachusetts—were unwilling to go that far. They sat in silent protest as the platform was adopted and Bryan was nominated.

A bolt right out of the convention, and the nomination of two good men on a "sound money" ticket, would have been the practical course, because it would have carried with it many more Democrats than later went into the "sound money" movement and voted for McKinley. It would have split the Democracy wide open, and also would have saved a lot of money for the business interests in the campaign that followed.

When September came there were so many Silver Republicans going over to Bryan, notwithstanding the Republicans' pledge to bring about "*an international agreement for the free coinage of silver*," that Major McKinley had to come out for Grover Cleveland's single standard, gold platform. He did it from the front porch, and then the order went out for the

* Ante, 239.

"sound money" Democrats, who had put up their own ticket of Palmer and Buckner, to switch their votes to McKinley. This switch, not open and above-board, I have been informed was due to President Cleveland's advice, and I have no doubt of it.

Early in September I brought word to Chicago from J. K. Gowdy, Chairman of the Republican State Central Committee of Indiana, that that committee was out of funds for the ordinary legitimate expenses of the campaign, that the sixty-day poll showed that Bryan had the State, that the tide was going against them and one thousand dollars right now would do more good than ten thousand on election day, and that unless they were supplied with funds right off, McKinley would lose Indiana. Instead of going to Senator Hanna with Mr. Gowdy's needs, I went to Philip D. Armour. I reasoned that Hanna might say, "Let Gowdy raise the money." I told Mr. Armour that, aside from the question of morals, they ought not wait until election day to send money to Indiana. Mr. Armour said, "We [his business associates] are putting up the money. I will see Hanna, and Indiana will get her share of the funds now."

Afterwards, and long before the election, Gowdy said to me, "We got the stuff all right." Not another word. No man could make a dollar go farther in an election, it was said, than he could, and with all his enemies it was never said of "Jack" Gowdy that he ever "knocked down" a dollar of campaign funds.

That much of our finance is mere manipulation, and most of our bank presidents mere clerks Samuel W. Allerton told me one time. "The London bankers are bidding up our Exchange, merely crediting us on their books,* while we are carrying the boys on the Board of Trade and telling them to bid up the price of corn, wheat, oats, hogs, and cattle," said Mr. Allerton at a critical time in the '96 campaign. This was the Allerton idea of politics.

* Ante, 2, 142.

"Phil" Armour was a big man intellectually as well as physically. It was said of him that he would have been a success in any line. Had he been a churchman he would have become a pope; if a soldier, he would have been a general; if a lawyer, he would have become a chief justice. But he disclaimed being anything but a "butcher." He possessed what neither Mark Hanna nor Grover Cleveland was gifted with, a fine sense of humor, and, like "Uncle Grover," he was not afraid to trust a boy. Charles Warren Fairbanks was not lacking in humor.

It was more a personal difference than a difference of principle between Mr. Cleveland and his Southern party men. In ante-bellum days, the men of the South had been for "sound money." Even Calhoun we have shown to have been a "sound money" man.* But Cleveland never could deal with the ex-Confederates as his biographers say he dealt with the Tammany men, John Kelly and Richard Croker,—that is, he could not drive them.†

I was raised on the doctrine that when the time comes to bolt, stand not on the order of your going. It was so when my father voted for Grover Cleveland. It was so with South Carolina. She at least got the applause of Wendell Phillips:

"Bankrupt South Carolina, with a hundred thousand more blacks than whites, throws down the gauntlet in defense of an idea in which she believes. I would that New England had one State amongst her six so brave."

More than Wendell Phillips, my father admired the nerve of the "old Confed." There was a sympathy between the "Yank" and the "Reb" veteran that did not extend to the men who had failed to help settle on the battlefield the differences that were not settled by the fathers who wrote the Constitution.

Senator Benjamin Tilman of South Carolina had suggested what the silver men would do had they been out-voted. "I am from the home of secession." Secession is all right—it all depends on why one secedes. The only Democrat I know

* Ante, 29.

† Ante, 237.

of who bolted out of the convention was young Harrison Robertson of the Louisville "Courier Journal." He wrote the editorial that took that paper out. "Marse Henry" was then in Paris, and he promptly followed by cable.

The switch of the Republicans was made when Charles W. Fairbanks tore up his silver speech and decided to come out as he was for "sound money." I do not believe he ever would have done that, had he not been of Cleveland's opinion. While I did not know, I had no doubt Fairbanks had sent to Major McKinley a copy of the speech as read to me, and that he would send the Major the speech he would write in place of it. That is the conventional way. Grover Cleveland's financial and political views and what "Old Grover" would do if they would play up to him, I was certain Fairbanks would transmit to McKinley. It was a way to Grover Cleveland's single gold standard, and then Grover Cleveland's friends "came across," as "Jack" Gowdy said, with "the stuff." If they hadn't, Bryan would have beaten McKinley regardless of platforms and front porch speeches.

While Charles W. Fairbanks was rated a "trimmer" on the political side, and that is true of the statesman with very few exceptions, on the legal and business side Fairbanks never hesitated. He was a man of executive force, and when the time came to act he could and did act, quicker than a politician, as quick as any statesman or business executive. He had unbounded faith in Grover Cleveland's judgment and patriotism, and he acted that day, after he learned Cleveland's views, as quickly as I ever saw him act.

Of course McKinley and the Republicans said they were going to reform the currency. They did pass the Aldrich-Veerland Act for the emergency currency to be issued in times of panics and that was about all that was needed.

Since the World War the gold standard is a fiction. As Samuel W. Allerton said, "Money is a mere matter of book-keeping or credit."* The gold is merely for the purpose of

* Ante, 142, 249.

occasionally settling balances, constantly being shipped back and forth.

As long as it is not a question of morals, it seems to me that if you are going to be "homogeneous," as "Marse" Henry Watterson used to say, with a friend, be for anything that that friend wants. So I was a good deal as Mr. Cleveland said he thought John Lamb was with reference to Senator Voorhees, "If Voorhees was for sawdust, Lamb would be for sawdust." My purpose was to do what "Uncle Grover" wanted, help him get his single gold standard. With all of Fairbanks' executive capacity and business training, he had some of those characteristics of friendship that "Marse Henry" possessed, and it was an element in his espousing McKinley's silver opinion and in bringing him to Cleveland's views aside from his own personal convictions.

CHAPTER XXI

THE PANIC OF 1907 AND OUR FEDERAL RESERVE SYSTEM

CAUSES OF THE PANIC OF 1907—WESTERN COUNTRY RESERVES TRANSFERRED TO ST. LOUIS AND CHICAGO BANKS AND THENCE TO NEW YORK—SPECULATION IN NEW YORK—SUSPENSION OF CURRENCY PAYMENTS—THE FEDERAL RESERVE DESIGNED TO PROVIDE FOR “EMERGENCY CURRENCY”—FAILS TO ABOLISH THE “GREENBACK”—PROFITS OF THE FEDERAL RESERVE—FEDERAL RESERVE CURRENCY BASED ON THE SAME IDEA AS THE “GREENBACK”—PAPER PROMISES TO PAY—AN INFLATION SYSTEM.

THE Bradley opinion,* in the Legal Tender Cases, is really at the basis of our Federal Reserve system of currency. Undoubtedly the panic of 1873 was due to the inflation of the currency as an incident of the greenback and National Bank legislation. But the panic of 1907 was not due to the greenbacks, as some political economists and many bankers contend it was.

The panic of 1907 was due to the bankers' violation of the National Banking law. That law required the National Banks in the reserve centers, New York, Chicago and St. Louis, to keep on hand, as a reserve, twenty-five per cent of their total assets, capital and deposits, while the country banks were only required to hold fifteen per cent of their assets as reserves, half of which percentage they might keep in the reserve centers.

Up to 1907, the country banks had kept their reserve of fifteen per cent mainly in their own vaults. This was true in

* Ante, 209, 230-31.

the Middle States and the West. At the instance of a certain Chicago banker, they were later induced to send fifty per cent of the fifteen per cent or their reserves to the Chicago and St. Louis banks, and these country funds, with a big part of their own reserves, were then sent by the Chicago and St. Louis banks to the New York banks and there loaned to the speculators, "on call," at interest rates as high as a hundred per cent.

In this way the New York banks loaned to the speculators a sum totaling more than all their deposits, including the deposits of the Western reserve banks, which in turn included the country reserves. Some of the New York banks were forced to suspend currency payments, and the Chicago and St. Louis banks followed suit. Instead of currency, they "cashed" depositors' checks with "certificates."

The fault was in the National Banking system, said the bankers and the college professors, as witness Professor McLaughlin of the Chicago University:

"Scientific banking requires some governmental agency authorized to issue currency in times of peace, to put the printing presses to going to stop a panic."*

Most of the newspapers agreed with him, as did all the bankers, but there never was a greater fallacy uttered. It was to be the Continental, the German, the English and the French system, said the professors and the financial writers. Just what "broke" Europe, is my answer. When we adopted it in our Federal Reserve System, it almost "broke" this country.

The great argument offered by those in favor of the adoption of the Federal Reserve system was that it would provide for "emergency currency." It was also going to abolish the National Banks and the "greenbacks."

The old-time Democrats could not get over their resentment against Secretary Chase for slaughtering Jackson's system of State banks. That Jackson was wrong in his attack on the National Banking system is conclusively proved by the utter

* Ante, 49.

futility of the State banks, and the futility of the present Federal Reserve system, which is designed to whip into it every State bank. It has not abolished the "greenbacks," and certainly not the State banks, for we have both today.

The Federal Reserve is a political system, pure and simple. The bankers could have defeated it, had they tried to do so, just as they held up Secretary Chase's National Banking system until it was made satisfactory to them. Hugh McCulloch, as president of the State Bank of Indiana, was one of the men who did this.*

The bankers originally were a unit in affirming that they were going to get rid of the greenbacks and defeat the Federal Reserve system, when President Wilson, at Secretary Bryan's instance, started the Federal Reserve plan through Congress. But when they got to Washington and were shown that the "rake-off" would be big, they acquiesced. John J. Mitchell, President of the Illinois Merchants Trust Company, the largest State Bank in Chicago, said, in an address, that in four years the National Banks in the Federal Reserve system had paid \$649,000,000 in dividends and had absorbed \$645,000,000 of losses.

Mr. Wilson wanted the banks to issue currency secured by bonds and gold and silver. This was the plan of the bankers. Mr. Bryan objected to the Wilson plan and threatened to resign if the Government did not issue currency through the medium of the Federal Reserve Board with a Government Board to control the discount rate. Mr. Bryan's views prevailed. But he did not get rid of the banks nor of the bank notes—the "greenbacks"—although of course a reserve of 5 or 6 to 1, as the Federal Reserve Act provides, is better than a ratio of 16 to 1.

The idea back of the Federal Reserve is the idea of the "greenback," that is, the right of the Government, in time of peace as well as in time of war, to make a promise to pay, on

* Ante, 146, 191.

a piece of paper, *money*. As to the question of how much of these paper promises shall be put out, whether in peace or war, history proves that Hugh McCullough was right when he said that the borrower, whether a government waging a war on borrowed money, or a banker or a promoter in time of peace, ought not to be the sole judge of the amount of paper "money" to be issued. "Bankers who borrowed from themselves," McCullough said, "were thieves." The Federal Reserve notes of 1917 show on their face that they were issued under the greenback legislation of 1863, and so it is that in order to understand our present money system we must go back to the money of the Civil War. This we have done in the previous chapters.*

My objection to the Federal Reserve system has always been that it is an inflation system. The politician and statesman forgets that he must first of all be a financier. The banker and college professor always join with the Czar or the statesman, whether he be William of Hohenzollern or Woodrow Wilson, the men who dominated Lincoln's administration or Jefferson Davis, in putting the printing presses to work in time of emergency, to issue what, on other occasions, they call "shin-plasters" or "wild-cat" currency.

The first step in winning the World's War on the part of the United States was the conventional way of debasing the coin of the realm or inflation.† Our Federal Reserve system made this easy. Instead of saving our solvency it almost broke us. It made it easy for our profiteers to put it over our European brethren. There is a lot in their claim that they did not get good and adequate consideration for the notes they signed, if we leave out of consideration the territory Great Britain and France acquired.

* Ante, Chapters X, XI, XV, XVI and XVII.

† Post, 266.

CHAPTER XXII

SOME INCIDENTS OF THE WORLD WAR PERIOD

THE "LUSITANIA" CLEARED IN VIOLATION OF U. S. STATUTES—AUTHOR'S MOTHER CALLS ON PRESIDENT WILSON—STATES HER VIEWS ON WAR—THE STATUTES PROHIBITING CARRYING AMMUNITION ON PASSENGER SHIPS—WOODROW WILSON CRITICIZED BY LAWYERS AND JUDGES—THE PRESIDENT MISLED BY HIS FOREIGN OBSERVERS—FAILURE OF THE STATESMEN AND EDITORS TO WARN WILSON NOT TO CLEAR THE "LUSITANIA"—THE DRAFT A MISTAKE—ATTEMPT OF THE GOVERNMENT TO TAKE OVER THE PACKING HOUSES—INFLATION IN PRICE OF CATTLE AND HOGS—THE "ASSESSMENT" SYSTEM OF PLACING THE LIBERTY BONDS—DANGER OF OPPOSING THE GOVERNMENT'S METHODS—AUTHOR CALLS PRESIDENT'S ATTENTION TO DURESS IN "PUTTING OVER" WAR LOANS—ADMINISTRATION LAYS RESPONSIBILITY ON FEDERAL RESERVE BANK.

THE cover of a woman's petticoat makes many a timid man bold. It seems to me that such was the case when the statesmen on the other side of the Atlantic ordered the "Lusitania" to receive ammunition in her hold,—even though so packed, it was said, that the cartridges would not explode except in a gun,—while our statesmen on this side gave the vessel a clearance in the face of the threats and warnings of the German Government that they intended to sink her. Clearing her was in direct violation of the statutes of the United States as enacted during the Civil War, forbidding women and children taking passage on boats carrying either ammunition or soldiers.

Sir John Fisher, British High Admiral, said that the Germans could and should sink the "Lusitania" as an act of war.

The fact that Germany was forced to acknowledge that it was an act of atrocity to sink the "Lusitania," and that the legalists and publicists now condemn such warfare, does not alter the fact that it was sheer incompetence and criminal negligence for the authorities on both sides of the Atlantic to give the boat a clearance in the face of the German warnings and of what the experts who handled submarines had told them the submarine could do, unless it was propaganda to send the "Lusitania" on her voyage of death. The "Lusitania" incident demonstrates the incompetency of the men at the top. The folly of sending her on her course was only equal to that of arming merchant ships. Theories vanish before a single fact. The statesmen and most of the experts on both sides of the Atlantic said a submarine could not sink the "Lusitania." She started on her voyage with half of her boilers out of commission and was running slow when hit. The war never would have been won had Woodrow Wilson continued to listen to the legalists or publicists, so-called, and the old women of both sexes, as Sir John Fisher calls the admirals and generals.

"Instinct," as I have heard an old lawyer say in discussing a woman's evidence, "beats reason in hitting the bullseye." Sitting on the beach at Watch Hill in 1913, watching the battleships maneuvering and the submarines diving, my mother said, "Those little things have revolutionized the war." Some of the statesmen and publicists do not yet see it. They do not even see that we should have guns on our battleships capable of shooting as far as do those of the English and Japanese.

With several grand-nephews and a grandson, dearest of all to her heart, all volunteers down on the border, my mother, who knew the ropes, demanded that I arrange for her to see President Wilson.* She said: "I want a commission for my grandson, and I want to talk to him about my grand-nephews. My Civil War experiences entitle me to at least a conference with Mr. Wilson."

I protested against going with her. I was not going to vote

* Ante, 18.

for Mr. Wilson, and, therefore, I felt it an impropriety to call on him. The last two trips I had made to Washington, I had gone to the White House and had protested against the passage of the Federal Reserve Act because the Aldrich-Veerland Act provided for the issue of all emergency currency or "shin-plasters" necessary when the bankers loan out all their reserves.* I did not vote for Mr. Wilson in 1912, and he knew that I did not. I was one of the Taft men who had refused to vote for Wilson in order to prevent Roosevelt from carrying Illinois. That was the final inside reason for voting for Woodrow Wilson. I told my mother that I would not vote for Hughes because of his action as a Supreme Court Judge in voting to amend the Sherman Act by writing the word "reasonable" in the Standard Oil Case after Congress had twice refused to make that amendment, and that I was going to take to the woods and not vote at all, and that manifestly it would be improper for me to call with her on President Wilson.

But she was determined, and while I am irrevocably fixed on certain things, I can go along on most any proposition, when necessary to gratify a friend, especially an old woman who happens to be my mother. I took my mother to Washington, put up at the Shoreham Hotel, and wrote the President a note that my mother was there and desired to see him. He made an appointment through Mr. Tumulty for the next day at eleven o'clock, and although he was pressed with official business, and had a big line waiting, and was that afternoon to take the three o'clock train for New York, he was most gracious and accorded my mother all the time she wanted.

She told him that it was not a case of getting the boys out of the trenches before Christmas. Her Civil War experience gave her a different conception of war than that of some of our half-baked statesmen, soldiers, editors and political economists. As an observer on the side, I then and there formed the impression that Woodrow Wilson would welcome any sound proposition, no matter whence it came, and so, as the

* Ante, 254.

interview between him and my mother closed, I intervened substantially as follows:

"Mr. President, I am not opposed to war, and as I understand the position of the administration as it comes through the press and other sources which may not always be authentic, the presence of our troops on the border does not mean an invasion of Mexico. The commercial interests have always been for war, and I have heard one big man say, if you would tie yourself up in Mexico we would be at ease. I even heard, before we came here, a pretty violent discussion between my mother and a banker, about the possible invasion of Mexico. She pressed him very hard in opposition to his views of promoting civilization with a cannon, and completely routed him when she said, 'You bankers haven't got any boys to feed to the cannon.' She is not opposed to war, neither am I, but I hope you will keep the boys in mind rather than the note-shavers and combiners, and will stick to your platform that you are going to keep us out of war. If so, I will vote for you and go down the line with you."

The President did not commit himself. His face remained impassive, but as I have sized up many a lawyer it seemed to me he quivered around the center of that long body, which meant that the pneumogastric nerve had communicated something from the brain cells to the region of the heart.

I soon had an opportunity to make good my pledge. At the October meeting of the Chicago Law Club, I was able to throw a bomb into the lawyers who were denouncing President Wilson's Adamson Act of Congress by reminding them that John Marshall had said in the case of *Gibbon vs. Ogden* in 1824 that the control by Congress over commerce, under the commerce clause of the Constitution, was plenary; that is, it extended to every instrument and agency that enters into commerce, to the wages of the trainmen on the railroads and the linchpins on the cars. Never fear a crowd of lawyers. There is always one who will get "skeered" and stampede the bunch like a wild steer in a herd of cattle. It is then a case of which

can run the fastest. But one or two lawyers it is well to fear, as you do a wild bull in a pasture.

And when it came to keeping us out of war, I went right down the line and am only sorry I did not have more power and Mr. Wilson more force in pressing his views. The world would be better off today had he forced a settlement as he proposed and as he could have done in December, 1916. Again I must say Thomas Riley Marshall was not of the order of Thomas A. Hendricks. I put up to Mr. Marshall the details of the manipulation of the United States Patent Office in the Creosote deal by National Committeeman Alvin T. Hert of Kentucky but formerly of Indiana, in which Mr. Hert was aided by Senators James E. Watson and James Henning, and even "Uncle Joe" Cannon, as a means to enable Mr. Wilson to get the electoral vote of Indiana, but Mr. Marshall, as I afterwards learned, neither communicated the facts to Mr. Wilson nor to the Democratic National Committee. He did not use them on the stump. Wilson and Marshall, as it was, only lost Indiana by a small margin. There was and is today recorded evidence to confirm Hert's statement that he not only bought the Patent Office but also two United States senators. These records were enough to cause President Harding to break the pledge he made to Hert in the Chicago Convention of 1920 that he would make Hert a member of his cabinet if Hert would transfer from Lowden to him, Harding, the Kentucky delegation at a critical stage of the balloting.

Having lost his State, naturally Mr. Wilson resented Vice-President Marshall's act in walking into the Cabinet Room and seating himself in the President's chair while the President was in bed. As one of the old Thomas A. Hendricks Democrats said, "That was a bonehead act on Thomas Riley's part."

On the "Lusitania" incident, I was able to convey the information to President Wilson, and to Mr. Bryan, then Secretary of State, that it was the opinion of the lawyer, Clarence Nichols, who drew the indictment in the "Dynamite Case," that

the statute which prohibited the carrying of dynamite on passenger trains was a judicial construction of the Civil War statute which prohibited the carrying of gunpowder, ammunition and soldiers on passenger ships,—although the word “dynamite” is not in the statute.

That it was a violation of the statute to place women and children and ammunition on the “Lusitania,” was the opinion of Mr. Nichols and of District Attorney Charles H. Miller, and also of Judge A. B. Anderson, the lawyer and judge respectively who tried the “Dynamite Case,” and such also was the opinion of Kenesaw Mountain Landis, then a member of the Federal Bench for the Northern District of Illinois. I had no other interest than to subserve my government in feeling out my judicial friends. The King in Council from time immemorial had asked the judges in advance what the law was. My lawyer and judicial friends were severe critics of Woodrow Wilson, and had no intention of sustaining him. Judge Landis wanted me to write an article in support of the proposition, and I did so, but only one newspaper published it, so far as I ever knew, although a good many had the opportunity to do so.

I mention this not only in defense of President Wilson’s policy of neutrality, but to show that he was deceived and misled by the men on the other side, including Ambassador Page, which is evidenced by the fact that Mr. Page wrote him repeatedly, “If you declare war, the Germans will quit.”

More persuasive than the opinion of the jurists, it seemed to me, was the opinion of the women. The morning after the word came of the sinking of the “Lusitania,” as I joined my mother at breakfast in Indianapolis, after a night ride from Chicago, she said:

“Do you think I would have been chump enough, in January, 1864, to take you and your sister on that boat at Memphis when I was on my way to Vicksburg to see your father, had I been warned that it was loaded with ammunition? The ammunition was in the hold and I did not see it and had but little

time to transfer from the Louisville boat on which I reached Memphis. The boat was under way before I discovered the situation. All the lights were put out and you and your sister were put to bed with your clothes on while I sat up. The boat ahead of us was fired into and sunk and the boat behind us fired on, but as there was no ammunition on it, it got through, as we did, but not as we did, unscathed. Of course, I knew I was taking my chances for I knew the Confederates were firing into all boats to prevent ammunition from going into the Union Army. Three months before, when I went up the river from Natchez, there was so much danger I went on a gunboat."

I adverted to the published warning issued by the German Embassy ten days before, and to the failure of any of the eminent statesmen like Theodore Roosevelt and Henry Cabot Lodge to notice this warning until after the event had taken place. Not only were the statesmen all asleep, but all the editors also. Not a single newspaper or editorial writer mentioned the warning advertisements or the notices that were published by the German Embassy in every leading newspaper in America. Astounded, we had read the warning on the first page of the "Indianapolis News" that bright afternoon on the first of May, but my mother was too much of a mechanic to rest under the delusion that they could not sink the ship. "Certainly they will convoy her," was the only assurance I could offer. Later on, the same matter was put up to Secretary of State Bryan, who was quite a friend of my mother's, and it is barely possible that the words from the old woman may have so influenced the conduct of the President and his Secretary of State, that Senator Lodge thought he was justified in saying that the President must have sent some confidential communication to the German Emperor.

In the face of the statutes of the United States prohibiting the putting of women and children on vessels carrying ammunition, the failure of the statesmen and of the newspapers

to notice the German threats and warning, and with the English Admiral, Sir John Fisher, saying that the sinking of the "Lusitania" was a justifiable act of war, President Wilson could not ask Congress to declare war simply because of that one act of atrocity.

When a state of war was finally declared to exist it was an entirely different proposition. Colonel House says he was very careful to advise Mr. Wilson not to ask for a declaration of war, and President Wilson did not ask it and Congress did not declare war.* It declared a state of war existed. There is no doubt that the administration waited before going in, to see if what Ambassador Page and the others said was true, namely, that the Germans would quit if the United States declared war and went in on the side of the Allies. This is conclusively demonstrated by the request of the British Government to defer action on our part while they used their shipping in commercial pursuits, and also because they would meet the German drive in 1917. But they failed as the French had gone to pieces. But for these assurances, the night following the declaration of war, and making due allowance for the predilection Woodrow Wilson had for Jefferson Davis' method of making war,† the call might have gone to the States for 2,000,000 men (under sections 16 and 17 of article 1 of the Constitution, which we have heretofore set out and discussed), and inside of six months 2,000,000 volunteers would have been ready for embarkation.‡ Later on, inside of sixty days after they were drafted, many men were in the front lines in France. Illinois alone could have furnished 500,000 in that time. That would have been the constitutional way for a democracy to make war.

The selective draft almost fell down, it was so slow. And

* Ante, 126.

† Ante, 164-5.

‡ Ante, 166.

they were not all good ones—the Belfield platform* to the contrary notwithstanding. Instead of good ones the doctors shoved in defectives and rejected some of the good ones. Perhaps for a consideration. I learned this in defending a drafted man from South Chicago who resented being put out after he got to the Spartanburg District and was indicted for his strong language, in the Federal Court for the Western District of South Carolina. Of course we acquitted him. Captain Smith (of the First National Bank of Anderson, South Carolina), was ready to testify that instead of good ones they sent him defectives both mental and physical to fill up his depleted ranks. But we did not need him, for as one old Confederate predicted on the train going down, “No Court in South Carolina is going to convict you for cussing the government for not letting you go into the fight.” General Bullard states in his book that he was forced to shoot a lot of selective service men in the back before he could get the others to “go in.”

Of course our Constitutional system is all wrong, reasons the average writer, we have outgrown it. But its bonds have not been burst and cannot be burst short of Constitutional amendments or a Constitutional Convention.

A state of war having been declared to exist—I avow if I had been a member of Congress, I would have voted with LaFollette against it—the only way was to “bore in.” While Henry Ford was going to get the boys out of the trenches before Christmas, and others were saying that the Germans were on the point of quitting, we were sending the word to the President that he had to go into the trenches. Of course we did not know the English had sent word to let them do the job. At a time when most of the farmers were afraid to go in, I bought feeding cattle at the stockyards at Indianapolis at prices that seemed almost prohibitive, higher than the best prime fed beef cattle had ever sold at on the Chicago market. And I

* Ante, 4.

went to raising hogs, in order, as the bankers said, "To have the grease to keep the boys going on the other side."

The money with which to keep the war going was simply printed. Most of the nations of Europe then waging war, namely, in December, 1917, were broke, and many will never liquidate their war indebtedness without mighty liberal concessions.

When the Government took over and operated the railroads, it was also proposed to take over the stockyards and the packing houses. The food supply was important and fundamental. But the packers opposed the plan. There were many conferences between lawyers representing the packers, and members of the administration, except Mr. Wilson, without any agreement being reached.

In the face of threats of the Government to seize the packing houses and appoint receivers for them, a final meeting was held between President Wilson and J. Ogden Armour, Mr. Armour representing the packers. After a long conference in which Mr. Armour protested that the Government could not handle the packing industry as it was handling the railroads, both lost their temper and the interview ended, the President saying, "You go home and buy the hogs and cattle and I will print the money to pay the bills."*

Mr. Armour went home and the prices of both cattle and hogs immediately advanced. Not long after that, a member of a commission house at the Union Stockyards at Chicago telephoned me, "If your cattle and hogs are ready, let them come." They were not exactly ready, that is, they were not completely finished hogs, and it was with the greatest difficulty that I prevailed on my farmer partner to ship them. He was holding them for a day he had fixed on later when they could go on the market as "fancy." These immature hogs sold at the market, on the 5th of July, 1918, to the Armour Company for \$23.00 a hundred, and amongst them were old sows that, in pre-war days, would not have brought at the outside \$4.00.

* Ante, 254.

The cattle that had been bought seven months before at \$8.25 a hundred sold at \$16.50, and had increased four hundred pounds in weight. They had been on full feed six months.

I care not whence he comes, but the man who says I was not then and there patriotic for concluding that such conditions and such prices could not continue without landing us where most of Europe is today, even though we "won" the war, does not know even the elementary principles of economics and finance.

Aside from the dictatorship of the war, I submit that wheat at \$3.00, corn at \$2.00, cattle at \$18.00, and hogs at \$23.00 will break any democracy in a short time. Certainly the Government of the United States broke the Armour Packing Company and thousands of farmers. If the Government can thus intervene in the farmers' business in time of war, it ought to do so in time of peace.

President Finley of the Chicago and Northwestern Railroad, in talking to the farmers of South Dakota on September 10, 1923, said that at the beginning of the World War the wealth of the United States aggregated \$59,000,000,000, and that it had then (1923) increased to \$300,000,000,000. Since President Finley's statement, a period of eighteen months, our National wealth has been written up another \$20,000,000,000. Where does that added \$231,000,000,000 or \$251,000,000,000 come from? Inflation in part at least. Some of the "water" is said to be still in the railroad balance sheet, and it may never be entirely squeezed out. But it will always be a source of annoyance to the financiers, to the men operating the railroads, and to the statesmen, even though the government says they must have rates that yield them $5\frac{1}{2}$ per cent on their paper capitalization. Certainly the farmers haven't any of that \$231,000,000,000. I am not arguing for any farm relief. I am simply calling attention to facts that would not have been noticed when this paragraph was written eighteen months ago.

The Federal Reserve System, its proponents say, is the only thing that saved us from a panic after the war. But there was

the panic, just the same. Everything connected with the farms declined. Today farm lands are worth less than before the war. This illustrates the evils of inflation. Clarkson N. Potter, the lawyer in the Legal Tender cases, said inflation operates to transfer money from one man's pocket to another's. The Federal Reserve system is an inflation system, and while it has made it easy for banks and speculators in bonds and stocks, and especially in food stuffs, it affords no relief to the man who produces the food.

At a time when my judicial friends of the Federal Bench, Judges Kenesaw Mountain Landis and A. B. Anderson, were merciless in their treatment of those charged with impeding the Government in the prosecution of the war, a brother lawyer at Quincy, Illinois, had been indicted for obstructing the war, his offence being that he had said in the privacy of his home, without any publicity, that he would not subscribe for his allotment of Liberty bonds.* This shows how serious it was to oppose, even tacitly, one single Government war loan, and how dangerous to question the entire method of prosecuting the war. While there was no law† like that of the Continental or the Confederate Congress, declaring a man an enemy of his country who questioned the wisdom of inflation as a means of winning a war, there was the Espionage Act and the Liberty loans which were enforced with all the ruthlessness of the Ku Klux Klan, which of course is the very essence of Jefferson Davis' dictatorship.

The first Liberty loan of the United States in the World War, was for \$1,000,000,000, the second was for \$3,500,000,000, and the third was for \$5,000,000,000. The fourth, for \$4,000,000,000, came in October, 1918, and, as with the previous loans, there came with it, addressed to all the farmers in the States carved out of the old Northwest Territory and States farther west, cards from the Treasury Department of the United States stating that "Your assessment will be so much,

* *Pate vs. U. S.*, 253 Fed. Rep. 270.

† *Ante*, 29, 142.

based on the number of acres that stand in the tax duplicate in your name." These cards were in form as follows:

UNITED STATES OF AMERICA—Treasury Department
Liberty Loan Campaign Committee

Name

Address

Occupation Annual Income \$.....

Net Worth \$.....

Real Estate \$..... Personal Property \$..... Total \$.....

United States Liberty
Bonds Owned

1st Issue \$.....

2nd Issue \$.....

3rd Issue \$.....

4th Issue \$.....

5th Issue \$.....

Submitted by Direction of
FEDERAL RESERVE DIRECTOR
OF SALES FOR INDIANA

Signed

.....
Title

Date

Reasons for not subscribing, for inadequate subscriptions, or
other information on reverse side.

UNITED STATES GOVERNMENT
WAR SERVICE

To the Federal Reserve Director of Sales:

You are advised that the person named has declined to help
our Government's war activities, refusing the purchase of our
Third Liberty Loan Bonds.

Name

P. O. Address

Township

County

State

WITNESS.....

Submitted

Chairman, Township Committee

Unlike my Illinois lawyer friend, I had not only subscribed for all they assessed against me, but, to use an expression that gamblers will understand, I had raised them back. The Chairman of the Liberty Loan Committee of Prairie Township, Indiana, would have had to testify, had I been indicted, that I was over-subscribed.

A lawyer does not have to be an advocate like Erskine or Phillips to aid his government, and this I rest on a word of warning of Erskine's, after he ceased to be Lord Chancellor of Great Britain, in protesting against a certain ill-advised measure that did not pass:

"We all know, my Lords, that in political life there are wheels within wheels, as many, almost, as in a silk-mill; that the smallest, and apparently the most insignificant, are sometimes, from their situations, the most operative; and that some of them, besides, are sunk so deep in the dirt that it is very difficult to find their places, *though one can very easily find their tracks and their effects.*"

Writing of this same great Lord Chancellor, simply as an advocate before a jury, the ablest advocate the race has produced, Lord Campbell thus sums up Erskine's work as a lawyer:*

"Such an advocate, in my opinion, stands quite as high in the scale of true greatness as the Parliamentary leader who ably opens a budget, who lucidly explains a new system of commercial policy, *or who dexterously attacks the measures of the Government.* . . . *For the fall of the Empire may depend on the verdict.*"

And while there was no advocate in these United States in the year 1918 comparable to Thomas Erskine or Wendell Phillips,† my preparations for trial, in the event of being indicted, were complete down to the selection of a "wind-jammer" who would run the lawsuit my way. He had as much nerve as Erskine. The Federal statute for a change of venue would have ruled Anderson and Landis out as prosecuting attorneys

* "Lives of the Lord Chancellors of Great Britain."

† Ante, 60.

and I would have had a judge on the bench who might give us "right and justice."

So, finally, from my farm in Prairie Township, Warren County, Indiana, in October, 1918, I sent a couple of those assessment cards or warrants, heretofore mentioned, to President Wilson, assuming, as I believed, that he was not a party to such methods. In his address to Congress on the 7th day of April, 1917, in asking that body to declare that a state of war existed, are these words: "It is our duty I most respectfully urge, to protect our people, so far as we may, against the serious hardships and evils which would be likely *to arise out of inflation* which would be produced by vast loans." As to the duress in "putting over" that particular loan, I suggested it was more on the order of absolutism than of a democracy, and as to the demands then clamorous in the press for "unconditional surrender," suggested that he recall what "unconditional surrender" did to his native States. I knew that Wilson, as an historian, knew how Alexander H. Stephens had predicted that inflation and drafts would be the downfall of the Confederacy.*

In a short time came an answer from Mr. Tumulty, stating that, by direction of the President, my letter and enclosures had been referred to the Secretary of the Treasury. In due time a letter came from the War Saving Section, War Loan Organization, Treasury Department, saying my letter had been referred to that office for reply, but that the questionnaire referred to was not enclosed and would a copy be forwarded.

At the time a report was current that these assessment cards had been printed in the Bureau of Printing and Engraving of the Treasury Department.

A round dozen of the cards were promptly mailed to the Loan Bureau, and soon a letter came saying that the Federal Reserve Bank was the responsible party.

It thus developed that it was the old conventional way of "winning the war," with no thought of "the morning after."

* Ante, 166.

And it offers food for reflection as to what might happen in time of stress with a man like William G. McAdoo at the head of the Government of the United States and the Federal Reserve System in the hollow of his hand.

The indictment* against the Quincy lawyer with the consent and at the instance of the Department of Justice was quashed.

President Wilson brought the war to a close instead of fighting on into Berlin, as many of our publicists, inflationists, and Federal reservists declared should be done. That he was right, I then and now believe. That it was a change of his position avowed, namely, that he would prosecute the war without regard to expense, no one can now successfully deny.

* Ante, 268.

CHAPTER XXIII

CONCLUSIONS

PRESIDENT WILSON'S LEAGUE OF NATIONS—GOVERNMENT SUPPORT OF LIBERTY BONDS—INFLUENCE OF THE COMMON PEOPLE ON A COUNTRY'S FINANCIAL POLICY—INFLATION INEVITABLE IN CARRYING ON A WAR SUCCESSFULLY—WARS CAN BE ENDED IF NATIONS WILL CEASE INFLATION OF THEIR CURRENCY.

I DID not go along with President Wilson with his League of Nations, but I did not find that that made any difference with him as to other questions of administration, or as to personal consideration. After he retired from the presidency and established the law office of Wilson and Colby, he sent me, through his Secretary, Mr. Bowling, the card of his firm and an invitation to call on them when I came to Washington.

I mention this simply to refute the oft-repeated assertion that Woodrow Wilson demanded abject submission to his measures. It may be that it was because I told him that if I was forced to make a choice between his League of Nations and Senator Lodge's League of Nations, I would take his League of Nations, and that he would be supported in putting up to Congress that which in his judgment should be the attitude of the United States in its foreign relations. Senator Lodge had been on record as a proponent of a League of Nations. He therefore ought to have gone along with Woodrow Wilson, and the inference is not unkind that his personal feeling influenced his actions.

Many of the Republicans, most of the editors and publicists, and certainly Senator Lodge, were for a League of Nations

"with reservations." Senator Borah was enough of a practical lawyer to raise the question, as the lawyers say, that when President Wilson proposed his League of Nations and the Republican leader suggested "reservations," it was not within the power of the Government of the United States, under the Constitution, not even by unanimous consent, to transfer any of its sovereignty to any other organization.

Wilson was right in advising his party associates in the United States Senate to vote against the League "with reservations," and equally right were the irreconcilable senators who followed Borah and voted with the President, and I, for one, shall always be grateful to Woodrow Wilson for the part he took in the killing. Section 10, the heart of the covenant, did not contemplate any reservations. It made a vital working organization. The reservations made it a League of Nations, but an impractical organization. Fortunate it was that the attempt to unhorse the President, by having him declared mentally incompetent, failed, for then the Lodge League "with reservations" would have been put over. Afflicted physically as he was, one of my doctor friends, Dr. P. V. Overman,* said, "Grayson must have been a good doctor to have kept Woodrow Wilson going as he did." From the information gained in the trial of will cases, after talking to my doctor friends and clients, I never had any doubt that Woodrow Wilson's mind was sound during those trying days, and so declared it. The average politician hasn't as much nerve as the average lawyer.

The Massachusetts statesmen have always operated under Macauley's saying, "The essence of politics is compromise." It was so with the slavery question. Massachusetts after night made a corrupt deal with South Carolina to keep the African slave trade alive for twenty years. Virginia protested. "*Logic admits of no compromise.*" So we had the war about slavery. It seems that possibly Wilson saw the light and yielded to the logic of the irreconcilables rather than the commercialism of Massachusetts. It may be that a League of

* Ante, 3.

Nations would keep us out of war, but it is impossible for us to enter one under our constitutional system. In the meantime, the American people should keep their powder dry and be prepared with airplanes, submarines and poisonous gas to beat the enemy to it. This is one way to end war.

After the war, while the Liberty Bonds were on the toboggan and had been sold under ninety, the "Chicago Tribune" published what purported to be an interview with Secretary of the Treasury Houston, in which interview Mr. Houston stated that the price of the Liberty Bonds in the market was no concern of the Government, and that it would not support them.

An old-maid school teacher brought me this interview and said, "I took my money out of the savings bank and put it in Liberty Bonds on the statement of Mr. McAdoo that the bonds would go above par when the war was won. What am I to do?"

A clipping of this interview from the "Tribune," was sent to President Wilson with a reminder that many of the school teachers in Chicago had taken their savings out of the banks and invested them in Liberty Bonds under the pledge of the Government that after the war they would be at par or higher. I also told him that on behalf of the banks in Chicago the statement was made that in a short time, for purposes of collateral, Liberty Bonds would be as low as seventy-five, and that one of the speculators who was selling them short had said they were going down to fifty.

Although the old maid protested vehemently, I gave her name and address to the President as one of the complainants who had a right to complain. I mollified her in part by assuring her that President Wilson was more concerned about what the old-maid school teachers were thinking and saying than he was with all the lawyers in the land, especially the lawyers representing the bankers who were playing both ends.

I claim no confidential relation with Mr. Wilson and did not

even receive an answer from him. But I did receive promptly a letter from the Secretary of the Treasury in which he said my letter to the President about the bonds had been referred to him and that he had been misquoted. At the same time the newspaper statements were that Mr. Houston was then in New York supporting the market for Liberty Bonds. I told my friend who had predicted that the bonds would go to fifty, that he had better cover. This he did, so he said, and soon the banks were lending on them at ninety and then at ninety-five, and after a year they went to par where they have since remained.

Reverting to Erskine's statement about the most obscure of our body politic being often the most powerful, I had been a member of the Chicago Board of Education, and while Margaret Haley, head of the Teachers' Federation, had never gone after me, many in the City of Chicago and in the State of Illinois, officials as well as bankers, trust companies, corporations, and men capable of paying large taxes, can testify to her activities. Mr. Wilson's school teaching may have given him an insight into the feminine mind. At any rate, the possibility of seven thousand teachers in the Chicago public schools turning soviet (and even as I write this in February, 1927, a question has arisen about the loyalty and patriotism of William McAndrew, Superintendent of Schools), was a serious menace to our government. As a member of the Chicago Board of Education, while my duties were mainly with the Building and Grounds Committee and as chairman of the Judiciary Committee, I learned that many of the teachers were inclined to listen to propaganda that was inimical to our system of government. They were not all for the good of the children.

It is not capitalism, as the soviet thinks, that is the enemy of the race. It is inflation. The statesmen don't see it yet. But the old-maid school teacher who takes her money out of the savings bank and buys the bond which the statesman prints, ought to see it. And the women who contribute the youth,

next to the money the most important element in all wars, are the people who can, if they will, exercise the predominant influence in determining whether we will permit debasing the coin of the realm or inflation, and consequently war or peace. The woman, now that she has the vote, must intervene. The banker, the statesman, the priest, who incur none of the risks or hazards of war unless there is a total defeat, are not those to determine what the financial system of any country shall be. The statesmen do not seem to be able to see it, but certainly the school teachers and the mothers can see that our sailors should have guns that shoot as far as do the guns of the Japs, and have as many submarines, airplanes and Zeppelins as the Europeans. A general who can't fly a plane should be retired. An old general is like an old lawyer, the greatest enemy of reform and progress.

My final word is that the trouble in government and banks is mainly at the top, but "the worst of all government, that which is most fatal to religion, is government by priests." I do not limit the word "priest" to the Roman Catholic hierarchy. The Methodist minister is the man who mainly put us in the Philippines and who still keeps us there. I am in favor of getting out forthwith, but if we are to stay there, the way to stay is to arm.

John C. Calhoun, who, whatever may have been his faults, was a sound money man *per se*, said, after the war of 1812, "It may be laid down as a maxim, that without banks and bank notes large government loans are impracticable, and without some substitute for the coin, such loans in the event of war will be unavoidable." As a basis, therefore, for the preparation for the next war—for the handling of our European loans has not brought us gratitude, but abuse—terms like "Uncle Shylock," and it won't change this attitude if we remit the entire debt,—I recur to Jefferson's words quoted at the beginning, "Call in all the outstanding paper," for we will probably have to inflate as we have never inflated before. Never have we

had and never was there a war of any magnitude conducted on a constitutional or "sound money" basis.

There are, all told, thirty thousand banks in the United States. One-fourth of these, or about seventy-five hundred, are National banks and are members of the Federal Reserve System. The other twenty-two thousand five hundred are State banks, of which only one thousand six hundred fifty are members of the Federal Reserve System out of the eleven thousand that are eligible to join that system. This demonstrates that the system is wrong, for its avowed purpose was to force all the banks in, to marshal the credit of the people, both for the farmer in Dakota who produces the food as well as the speculator in New York who with money borrowed from the New York banks, or the New York Federal Reserve Bank itself, deals in warehouse certificates or "futures."

Meanwhile, skyrocketing and pyramiding on the stock exchanges may be "prosperity" even though not a dollar is added to the Nation's wealth. The avowed purpose in passing the Federal Reserve Act has not been attained, namely, to marshal the nation's credit for the benefit of all. Some scheme should be devised similar to Secretary Chase's National Banking Act, which whipped most of the State banks of that time into the National banking system. The Wall Street man put it over on William Jennings Bryan and Woodrow Wilson.

Perhaps a League of Nations with a super-government over all would stop inflation or debasing the coin of the realm and we may have to come to it, but, meanwhile, under our constitutional system it is not possible for the president and senate, even by unanimous consent, under the treaty making powers of the Constitution, to put us in a League of Nations or a World Court.

The bankers, the international money brokers, and the statesmen must no longer question the right of the people to discuss the question of war as primarily a question of finance, when we consider that as sound a banker and as capable an executive

as Hugh McCullough could manipulate a situation whereby he could pay his obligations in "rag money," instead of in the coin required by the charter of his Indiana State Bank, and then at a later time hold up a decision of the United States Supreme Court until he was ready to reverse the decision of the State Courts making "shin plasters" legal tenders, and receive the plaudits of the banking world at London, whose policy was never to redeem the bonds of the Napoleonic Era and who had supported the "shin plasters" of the Confederacy. The English statesman and banker of today, 1926, after securing a reduction in their war debt to this country of \$1,656,000,000, now even proposes that the United States shall wipe out the entire debt. Most of the European debts have been cancelled. There should be a frank acknowledgment of this bankruptcy. With this acknowledgment the people would see the inefficiency and dishonesty of our financial system.

That the banker the world over is too ready to listen to the statesmen, when it comes to the question of war, too ready to help float a bond issue, take his "rakeoff" and get out from under even if he don't go short, and that nothing is worse than money of any kind if there is too much of it, is my firm belief. I recur to the language of Judge Samuel E. Perkins, and his words of warning to Hugh McCullough when he, Judge Perkins, said that, as a temporary expedient, the bank could pay in "rag money" instead of coin.

The international banker, and the government which puts out a long line of bills and bonds based simply on promises, is no different from the banker of the wild-cat days or the banker who starts doing business on the strength of a few deposits. In short, both are dishonest.

My final conclusion from the foregoing, and I submit it in competition with Mr. Bok, is that if the Nations would quit debasing the coin of the realm, by inflating the currency, it will not only end war for good and all, but many other evils of our body politic as well.*

* Ante, 15.

Meanwhile War is personified in Abraham Lincoln's Gettysburg address: "The world will little heed what we say here, but will never forget what they did here." And so it is of that period that it is written, "If Mr. Lincoln had appointed General Grant Commander-in-Chief when he made Halleck chief in 1862, the war would have been shortened by a year."* Had he put Grant in command, even in the West, in September, 1861, after Grant had revealed his genius with the pen and had beaten the Bishop† of the Episcopal Church, South, to Paducah, we submit for the consideration of the critics, pacifists, biographers and historians, that in view of what we have quoted from Jefferson Davis, the war would have been ended by the time William H. Halleck was appointed Commander-in-Chief, or within a year.‡

War is action. But few men are fit to conduct it, professionals even though they be. Woodrow Wilson soon learned this. He certainly was *par excellence* in whipping the American people up to action after he saw that what Walter Page and the European statesmen had predicted—that a declaration of war would bring the Germans to their knees—was absurd. It is the marvel of history that the only general to come out of the World War with the confidence of both the private soldier and the ordinary citizen was a civilian, Charles G. Dawes. And the way he handled the reparations problem shows he deserved it. Briand paraphrased it, that for both France and Germany the centuries of war have supplied glory and graves enough, and the time has arrived for new methods and a new spirit.

Down at Spartanburg, where the New York National Guard, or the 27th Division, was in training, and where the grandmother went that she might see something of the grandson in whose behalf she had visited the President, we learned of some things that do not go into histories and biographies. Only a

* Horace White's *Life of Lyman Trumbull*, page 226.

† General Leonidas A. Polk, ante, 172.

‡ Ante, 161.

second lieutenant, but division instructor in machine gun drill and tactics, and drilling under Englishmen out of the trenches who were to return to the front to be killed, the grandson* and ex-Princeton football player, with a grandfather in Arlington, was some color for the wild propaganda George Creel was putting out to the American people in the Winter and early Spring of 1918, while the Germans were getting ready and were actually driving the French and English before them.

Privately these English officers said that both the English and the French "were whipped," that it was only a question of time until they would retreat to the sea, and that the only hope lay in getting the Americans over in time to stop the German advance. The fact that the grandson was put in with a single machine gun company to hold the flank of twelve infantry divisions, two American and ten French, after they got on the other side, indicates something of the haste and the change in methods, and that the President of the United States made no mistake in being as gracious as the French King had been to the English woman in 1781.† Indeed, there is some indication that he caused the English officers to be "tipped off" to commend the lieutenant in some of the drills as preparatory to shoving him in as captain.

In the higher realm it must be conceded that Woodrow Wilson showed the genius of command. He stood by Pershing in resisting the demands of the foreign generals and chancellors that the American soldiers be used simply to recruit the depleted French and English armies. Even General Wood deprecated the aeroplane and said that the conventional way of assaulting the machine-gun nests with masses of infantry must be adhered to. That they could do it, the President of the United States became convinced after reading General Grant's memoirs, and that Bundy was right in meeting them in the open field, even though contrary to Foch's orders, just as Grant had done

* Walter Gresham Andrews.

† Ante, 18, 257.

with "the mud sills of the Prairies" against the chivalry of the South at Shiloh.*

Surprised and knocked out at the first onset on that bright Sunday morning, April 6, 1862, the President of the Confederate States of America says, in the "Rise and Fall of the Confederate Government," that the first day's battle was a complete victory for the Stars and Bars, and so say all the Southern and Northern historians and publicists with Whitelaw Reed and Henry Villard in the lead. Jefferson Davis states the casualties as follows: Of the Confederates, 1,728 were killed and 8,012 wounded, making a total of 9,730; of Grant's army, 1,500 were killed and 6,634 wounded, making a total of 8,134. Among the Confederate killed was the Confederate Commander-in-Chief, General Albert Sidney Johnston of whose death Jefferson Davis says:

"In his fall the great pillar of the Southern Confederacy was crushed and beneath its fragments the best hope of the Southwest lay buried."

All the historians and publicists to the contrary, I submit that the victory was Grant's; that he then and there that afternoon of the first day sealed the "hope" of the Confederacy, notwithstanding that he was removed and not even permitted to make an official report of what was the most important battle of the war.

General Lew Wallace is as unfair a critic of General Grant as any of the confederate or northern historians or publicists. He was a friend of my father and treated me with that consideration which an elder man can bestow upon the younger, which is the most flattering of all.

General Wallace undertakes to give an account of the Battle of Shiloh from the lawyer's standpoint. For while my father was always clear that General Grant won the victory at Shiloh, notwithstanding the surprise and the orders that were suppressed which showed the surprise, although it was not the kind of a surprise the historians make out according to the

* Ante, 164, note.

testimony we can quote from Cleburne's biographer* my father was of the opinion that General Grant afterwards expressed, viz.: that General Wallace was treated unfairly. The point I wish to present and emphasize is that General Wallace failed to remember General Grant won a victory in the final round. It was not a prize fight for points but for blood. That while the victory was due to Grant's ability to shift and change a fight with green troops, as you say, unsupported by breast-works, the victory was due to the fact that most of Grant's individual soldiers were animated, as Grant himself was, by the idea of the righteousness of their cause. Many of them, General Grant says, received their arms at Paducah less than thirty days before. "They had not when the attack was made become proficient in the manual of arms." Some of them never did; but most were natural sharp-shooters. McClelland and Hurlburt's division as well as Lew Wallace's had been in the charge of Donaldson. Their flanks were protected by the back water of the Tennessee in Owl Lick and Snake Creeks.

That army at Pittsburgh Landing and Shiloh was known as the Army of the Tennessee. It was the typical American army of that period. According to General Grant it was the only army of that war never defeated in battle. However it may have been with the editors and the experts, Shiloh convinced its private soldiers that they were invincible, and that Sherman, twice wounded the first day, was good enough for them. The private soldier never forgave General Lew Wallace. I heard him say this himself. The modern general, safe at the end of a telegraph or telephone line, should remember that he is not a heroic figure, even to the mother of the boy in the front line. That the Army of the Tennessee surpassed all other armies of the Union in drinking whisky, is one of the stories that has been handed down by word of mouth. That they drank whisky freely on their campaigns, my father is one of my authorities, but never to hurt their efficiency.

* Post, 295.

"It is not in the books," as we say of some of the practice or technicalities of my profession, but I have heard from both "Yank" and "Reb" that there was an abundance of good whisky in not only Sherman's but the other camps that 6th day of April, 1862, at Shiloh. Another fact Sherman told that court-martial at Memphis was that Grant said: "Hold on till night,—they will be in our camps tonight and in no condition to resist us in the morning, when we will assail them and drive them pell mell."

I heard "Private" John M. Allen of Tupelo, Mississippi, one of Forrests Cavalry men, say that they found whisky and greenbacks in large quantities and volumes in the camps. They drank the former and scattered the latter to the winds as they considered them "shinplasters."* John M. Allen, for a couple of decades following reconstruction, was one of the country's most valuable members of Congress. As the only "ex-living private of the Confederate Army," he always easily defeated his ex-confederate general opponent.

General Wallace undertakes to analyze the Battle prior to his arrival, from the legal standpoint. Had he been as good a lawyer as John A. Rawlins was before the beginning of the war, he would not have written the account that he did. And so it is that Rawlins' logic was what destroyed Lew Wallace as a military commander notwithstanding Wallace's brother-in-law, United States Senator Henry S. Lane, sat high in the confidence of the Lincoln administration, supported as he then was by Governor Morton of Indiana.

General Wallace rests his conclusion that Grant and the Army of the Tennessee was whipped the first day on a quotation from the Life of General Albert Sidney Johnston. Because it is conclusive that the final round was a knockout for the Confederates I give it here in full as General Wallace quotes it:

"It was in this condition that Breckinridge rode up to General Johnston, and, in his preoccupation, not observing Governor Harris,

* Chapter 11.

said, 'General, I have a Tennessee regiment that won't fight.' Harris broke in energetically, 'General Breckinridge, show *me* that regiment.' Breckinridge courteously and apologetically indicated the command, and General Johnston said, 'Let the governor go to them.' Governor Harris went, and with some difficulty put the regiment in line of battle on the hill. After some delay, the wavering still increasing, General Johnston directed that the line be got ready for a charge. Breckinridge soon returned, and said he feared he could not get the brigade to make the charge. General Johnston replied to him, cheerfully, 'Oh, yes, general, I think you can.' Breckinridge . . . told him he had tried and failed. 'Then I will help you,' said General Johnston. 'We can get them to make the charge.' Turning to Governor Harris, who had come back to report that the Tennessee regiment was in line, he requested him to return and encourage this regiment, then some distance to his right but under his eye, and to aid in getting them to charge. Harris galloped to the right, and, breaking in among the soldiers with a sharp harangue, dismounted and led them afoot, pistol in hand, up to their alignment, and in the charge when it was made.

"In the meantime, Breckinridge, with his fine voice and manly bearing, was appealing to the soldiers, aided by his son, Cabell, and a very gallant staff. It was a goodly company; and in the charge Breckinridge, leading and towering above them all, was the only one who escaped unscathed. . . . Cabell Breckinridge, then a mere boy, rode close by his father during all this stirring scene.

"General Johnston rode out in front, and slowly down the line. His hat was off. His sword rested in its scabbard. In his right hand he held a little tin cup. . . . His presence was full of inspiration. . . . He sat his beautiful thoroughbred bay, 'Fire-eater,' with easy command. . . . His words were few. He touched their bayonets with significant gesture. . . . When he reached the center of the line he turned. 'I will lead you!' he said, and moved towards the enemy. . . . Right up the steep they went."

Instead of going far up "The Steep," the line halted when Johnston fell. All are agreed on this.

On page 540, General Lew Wallace says:

"There came then immediately—when Johnston fell—an observable lull in the battle—in the sounds, in the general movement.

While in the mire and watery depths beyond Snake Creek I noticed and wondered at it. A sentimentalist might say it was the voluntary, poetic tribute of an army to its fallen leader. Not so. Beauregard, risen to first in command, was halting everything of it, preliminary to a return to Corinth."

On the Union side General Grant was about opposite where Johnston fell. But we must not quote him.

Johnston's army had consisted of four corps, Hardee's, Polk's, Bragg's and Breckinridge's. Breckinridge's was the reserve. The first three constituting in the early morning three parallel lines of battle had been whipped into at least a single line and stalled, and that is why Breckinridge had been brought up.

Over to the right of where Johnston fell close to the river, even Jefferson Davis records that Jackson's brigade was refusing to advance because it was out of ammunition. To the right of Jackson and close to "the river," the Southern president records that General Chalmers' brigade was halted by Grant's batteries directly in front and the enfilading fire of the gun boats.

At this time Grant's shortened line ran from the river above Pittsburgh Landing southwest to a point south of the Snake Creek bridge which General Lew Wallace was then approaching.

Jefferson Davis says that Beauregard, the second in command in the Councils of War at noon on the 5th, at night on the 5th, and on the morning of the 6th before the attack advised against it, "We have been too slow argued Beauregard. It won't be a surprise. Failing to have attacked at 5 o'clock the morning of the 5th we should now return to Corinth."

Jefferson Davis puts the Confederate force on the morning of the 6th at 40,335 (exclusive of officers and teamsters); Grant's at practically the same, for although he says Grant had 50,000 men, Davis claims 8,500 of them were with General Wallace and not in the fight. So it was an even break although General Grant claims he only had 33,000 men. There is much to support the statement that the Confederate "effectives" were

80,000. Since the adaption of the dictatorship, Jefferson Davis had been combing the South and Southwest for troops.* However this may be, after Shiloh there never was any more talk about one "Reb" being the equal of seven "Yanks." That was chivalry. It was the basis for Jefferson Davis's assertion, "We will take the arms from Grant's soldiers and beat Buell and Lew Wallace with their own weapons."

This proposition of taking the arms of Grant's soldiers from them was propaganda pure and simple. But a good deal of making war is propaganda. Assume that it is a legitimate weapon of war, to deceive the enemy, it is no justification by way of propaganda to deceive your own people. The alibi of Jefferson Davis and Braxton Bragg that the Confederate Army was improperly armed is perfect. The fact that afterwards in running the blockade the Confederate Government supplied its soldiers with arms does not alter the fact to which we have heretofore adverted that General Grant at least was the one man in the North who knew the South was not properly armed; and that all he had to do was to bore in. Another significant fact is that all of his division commanders except Sherman were volunteers. With the old army and the politicians against him, Grant's Shiloh exploit was an exhibition of moral courage that no other American has yet revealed.

Misled and misinformed after the three confederate lines had been consolidated into a single one the stalled confederate soldiers began to exercise that judgment that some of them expressed, that the Confederacy was not even a hope. We have adverted in the beginning chapter 7 to the fact that Tennessee at first refused to vote herself out of the Union.† A conversation I heard between Col. Henry Watterson of the Louisville Courier-Journal, "Marse Henry," and Major Wm. H. Thomas of the Seventh Tennessee, "Bill Thomas," is conclusive as to this. Watterson and the Courier-Journal in 1908 had inaugurated a movement for sound money in opposition to the

* Ante, 164.

† Ante, 102.

greenbacks behind which Bryan and fiatism stood. Thomas was for sound money, but he was for staying by the Democratic party regardless of economics. In the argument Watterson prevailed until Thomas said, "Henry Watterson, you ought to stay with your people. Don't you now what Bill Geddes did at the Nashville convention,—he had made speeches all over Tennessee against secession. He came to the convention with his father and brother, two uncles and three cousins, all secessionists, and fought all through the convention, was finally voted down, went out, got drunk, came back to the levee where his father and brother and uncles were on the steamboat leaving for Clarksville. As the captain rung the bell to let go the bow line, Bill waved his hat, and said 'Come on back here, if you fellows are determined to go to hell I will go with you.' Bill went into the Confederacy and achieved a distinction that neither you nor I did."

The fact is that neither Col. Henry Watterson or Major Bill Thomas ever even hoped for the success of the Confederacy. Watterson in a speech termed it a mirage. His answer to Thomas was, "Bill, this is economics. We can't fight about economics."

I am not deprecating the Confederate soldier. He was as good as ever was born and of the finest sense of humor. I have met the ex-Confederate soldier in Kentucky, Tennessee, Mississippi, Louisiana, Virginia and North and South Carolina and at Confederate reunions. And in every instance they were men of character. All had been volunteers. Many a good dinner I ate at the hospitable board of B. F. Leonard of Natchez, Miss. Brown's Garden "under the Hill" was his home. He carried a musket from first to the last, finally surrendering with "Joe Johnston" in North Carolina. He was typical of the recognition the private soldier accorded General Grant. He was one of the "Rebs" who in response to a Rebel picket's call, "Turn out the guard, General Grant," turned out and presented arms as General Grant rode down Chattanooga

Creek inspecting his own pickets on the opposite side of the stream. "General Grant saluted us," said old Leonard and I would no more then have shot him than my own mother.*

Here aside from the impulses of his heart is an explanation of some of that feeling Grant manifested for the Confederate soldier in the final interview with Lee at Appomattox.† The horses and mules would be needed to put in the coming crop, and so should remain the private property of the Confederate soldiers. Liberal rations were issued to them. We have detailed in Chapter 14 how hard it was for General Grant to preserve the semblance of obeying even President Lincoln's instructions. When President Johnson threatened to—it never went beyond that—to ignore Grant's pledges to Lee, the row was on.

A fight was what the Union cause needed. It was what

* Ante, 188.

† Grant's Memoirs, Vol. 1, p. 509: "After we had secured the opening of a line over which to bring our supplies to the army, I made a personal inspection to see the situation of the pickets of the two armies. As I have stated, Chattanooga Creek comes down the center of the valley to within a mile or such a matter of the town of Chattanooga, then bears off westerly, then northwesterly, and enters the Tennessee River at the foot of Lookout Mountain. This creek, from its mouth up to where it bears off west, lay between the two lines of pickets, and the guards of both armies drew their water from the same stream. As I would be under short-range fire and in an open country, I took nobody with me, except, I believe, a bugler, who stayed some distance to the rear. I rode from our right around to our left. When I came to the camp of the picket-guard of our side, I heard the call, 'Turn out the guard for the commanding general.' I replied, 'Never mind the guard' and they were dismissed and went back to their tents. Just back of these, and about equally distant from the creek, were the guards of the Confederate pickets. The sentinel on their post called out in like manner, 'Turn out the guard for the commanding general,' and, I believe, added, 'General Grant.' Their line in a moment front-faced to the north, facing me, and gave a salute, which I returned.

The most friendly relations seemed to exist between the pickets of the two armies. At one place there was a tree which had fallen across the stream, and which was used by the soldiers of both armies in drawing water for their camps. General Longstreet's corps was stationed there at the time, and wore blue of a little different shade from our uniform. Seeing a soldier in blue on this log, I rode up to him, commenced conversing with him, and asked whose corps he belonged to. He was very polite, and, touching his hat to me, said he belonged to General Longstreet's corps. I asked him a few questions,—but not with a view of gaining any particular information,—all of which he answered, and I rode off."

The next day, the 24th, I started out to make a personal inspection, taking Thomas and Smith with me, besides most of the members of my personal staff. We crossed to the north side of the river, and moving to the north of detached spurs of hills, reached the Tennessee at Brown's ferry, some three miles below Lookout Mountain, unobserved by the enemy. Here we left our horses back from the river and approached the water on foot. There was a picket-station of the enemy on the opposite side, of about twenty men, in full view, and we were within easy range. They did not fire upon us nor seem to be disturbed by our presence. They must have seen that we were all commissioned officers. But I suppose they looked upon the garrison of Chattanooga as prisoners of war, feeding or starving themselves, and thought it would be inhuman to kill any of them except in self-defense.

That night I issued orders for opening the route to Bridgeport—a cracker line, as the soldiers appropriately termed it. They had been so long on short rations that my first thought was the establishment of a line over which food might reach them.

Grant was planning contrary to Halleck and all the incompetents in Washington and contrary to some of the obsolete maxims of war. My father, Walter Q. Gresham, was Colonel of the 53rd Indiana Volunteers stationed at Savannah, Grant's headquarters, where Grant, on the night of the 5th was awaiting the coming of General Buell with what was then the superbly drilled Army of the Cumberland. From Pittsburgh Landing or Shiloh, on General Grant's orders, my father's regiment, ten days before, had been brought back to Savannah, and my father put in command of the brigade at that place, which consisted of his own and three other regiments, a squadron of cavalry and a battery. One reason for this was that there were a great many men in the 53rd sick and some incompetents. Before the end of the ten days the incompetents had been weeded out and the sick sent to Paducah, and the regiment, many of whom had been squirrel hunters, was ready for duty, armed with the latest improved muskets or rifles—although of course they weren't much for dress parade. During those ten days General Grant spent the days at Pittsburgh Landing and Shiloh, visiting his various units, drilling them in company, regiment, brigade, and divisions, and the nights at Savannah, going back and forth by steamboat which lay at night with steam up ready to leave instanter. John A. Rawlins, his lawyer, and James B. McPherson, his engineer, were always with him. They were both colonels on his staff. It was during those ten nights, or mainly days, with the maps before them, that my father was taken into the confidence of "the silent warrior of the North." The plan was to take possession of the Memphis and Charleston railroad and attack and destroy the Rebel army wherever they could find it, and press on as they then were into the heart of Dixie. So it is recorded in letters written at the time by my father to my mother. "Look at the map," was one of his sentences. Another, "See that railroad running through Corinth. We are going over there and take possession of it, unless they bring the fight here."

Instead of berating him for failing to obey the orders in shoving out his pickets, Grant got to Sherman as soon as possible with the assurance that, "The victory is ours." This I have heard my father affirm many times. He heard it from Sherman as a witness before a military court-martial which the archives of the War Department show sat at Memphis in June, 1862, but which is not mentioned in the "Rebellion Records" or in any history.*

My father was with General Grant at Savannah when the sound of the first gun at Shiloh was heard. He said he thought from General Grant's manner that he was surprised, but he would not allow my father to take his regiment to Pittsburgh Landing, although he followed him on the boat as he was leaving and begged to be permitted to go to the battle which had been contemplated for ten days. Grant was to attack. So much the better if the enemy would bring the fight to him. His final words were, "My plans are all made. You must stay here but tell General Buell to hurry on." Buell reached Grant's headquarters after Grant had gone. It was noon when he reached Grant at Shiloh. He urged Grant to retreat. The laconic reply was, "I've got them whipped." The firing was ceasing as the first regiment of Buell's army crossed the river at Pittsburgh Landing. We reiterate what was said in our opening chapter, that in Napoleon's army Buell would have been shot.

According to Captain Irving A. Buck, adjutant-general and

* The Court Martial sat at Memphis in August, 1862. It was composed of Brigadier General S. A. Hurlburt, of Shiloh fame, commanding the Fourth Division; President Brigadier General Dever, Third Brigade, Fifth Division; Brigadier General Veatch, Second Brigade, Fourth Division; Colonel Logan, Thirty-second Illinois; Colonel Mungen, Fifty-seventh Ohio Infantry; Colonel Graham, Fifty-third Indiana Infantry; Colonel Grierson, Sixth Illinois Cavalry and Captain James C. McCoy, A. D. C. Judge Advocate. Colonel Thomas Worthington of the Forty-sixth Ohio was the culprit. General Sherman was the complainant. He charged that Colonel Worthington, who was a West Point graduate, and who had commanded a regiment in Sherman's Division had charged in a pamphlet that he, Sherman, had failed to obey Grant's orders to shove out his pickets. The court found Worthington guilty for attacking his superior officer in the public print, regardless of what his, Sherman's, orders were. They were not admitted in evidence in justification or even mitigation. Colonel Gresham was the only member of the Court to vote to sustain the challenge of Worthington that General Sherman could not be, even in time of war in the American system, the accuser and name the court as he did to try the defendant. Through John A. Rawlins, General Grant approved the conviction and sent the record to the War Department at Washington. October, 1862 Colonel Worthington was drafted from the rolls. January 8, 1867, this order was revoked and he was permitted to resign as of date November 21, 1862.

biographer of General Patrick R. Cleburne, one of the best field officers the Confederacy produced, "as good as old Jeff himself." "Sherman was in line to receive us."* The Cleburne brigade, carrying 2,900 muskets (officers were not counted)

* Irving A. Buck, Cleburne's Adjutant General, in "Cleburne and His Command," on page 36 says:

Cleburne's brigade, the extreme left of the army, rested its left near Owl Creek, and was formed as follows, from right to left: Twenty-third Tennessee, Sixth Mississippi, Fifth Tennessee, Twenty-fourth Tennessee regiments on the left; Fifteenth Arkansas deployed as skirmishers in front of the line, with their reserves near the left, and the Second Tennessee en echelon 500 yards in rear of the left flank, with a strong line of skirmishers covering the interval between its left and that of the Twenty-fourth Tennessee. With the corps the brigade was ordered to advance at daylight on Sunday, April 6, which it did soon after, keeping proper distance from and regulating its movements by those of General Wood's brigade, on Cleburne's right. Trigg's battery followed near the right, but was under control of the chief of artillery, and left the brigade after the first encounter.

The advance for some distance through the woods was without opposition. The enemy first showed his forces about 400 yards off towards the left flank, upon which Cleburne ordered Captain Trigg to send a howitzer in that direction and throw a few shells into them. Moving forward, the Fifteenth Arkansas engaged the enemy's skirmishers, and drove them back on their first line of battle, and the skirmishers of the Fifteenth Arkansas then fell back on their reserves. The brigade, advancing, was soon in sight of the enemy's encampments, behind the first of which he had formed his line of battle, very advantageously posted and overlapping Cleburne's left flank by at least half a brigade front. His line was lying down behind the rising ground on which his tents were pitched, and opposite the brigade's right he had made a breast-work of logs and bales of hay. From these deadly volleys were poured upon the men as they advanced. Everywhere musketry and artillery swept the open spaces between the tents, threatening destruction to every living thing that dared to cross them.

An almost impassable morass covered the front of and impeded the advance of the center, and finally caused a wide opening in the line. The Fifth Tennessee and the regiments on its left swung to the left of this swamp, and the Sixth Mississippi and Twenty-third Tennessee advanced on its right. Cleburne's horse bogged down in it, throwing him, and he got out with difficulty. Trigg's battery, posted on the high grounds of the woods, in rear, opened over the heads of the men, but the leaves were so thick he could only see in one direction, while the enemy was firing upon him from several directions. Thus he was unable to accomplish much, and was ordered to a new position, and Cleburne had no artillery under his command from that time. The Sixth Mississippi and Twenty-third Tennessee charged through the enemy's encampment. The line was necessarily broken by the standing tents, and under the terrific fire from the serried ranks in front much confusion ensued, and a quick and bloody repulse was the consequence. The Twenty-third Tennessee was the consequence. The Twenty-third Tennessee was with difficulty rallied about 100 yards in the rear. Again and again the Sixth Mississippi, unaided, charged the enemy's line, and it was only when it had lost 300 men, killed and wounded, out of an aggregate of 425, or nearly seventy-three per cent., that it yielded, and retreated over its own dead and dying. Colonel Thornton and Major Lowry of the regiment were both wounded.

The left, which, after a desperate fight and heavy loss, caused chiefly by the fact that the enemy flanked the brigade on the left, had driven the Federals back at all points, was now in possession of his first line of encampments. Here the Second Tennessee, coming up on the left, charged through a murderous crossfire. Its gallant major, Wm. R. Doak, fell mortally wounded, and Col. Wm. B. Bate had his leg broken by a rifle ball. At this point the Twenty-fourth Tennessee won character for steady valor, and the Fifteenth Arkansas inflicted heavy loss upon the enemy, and lost many good men and officers, among the latter Maj. J. T. Harris, who was shot dead while firing upon the Federals with his revolver. * * *

Cleburne at 12 M. was thus left without a command on that part of the field, and was proceeding along the rear to join his left wing, when meeting General Hardee he was ordered to collect and bring into the fight a large body of stragglers from different commands who were swarming the encampments in the rear. After great exertion he was partially successful in doing this, but finding that this kind of force would not stand anything approaching a heavy fire, he determined to rejoin his own command on the left, which he did about 2 o'clock. The Fifth and Twenty-fourth Tennessee and Fifteenth Arkansas had halted under the brow of an abrupt hill. The Second Tennessee had suffered so severely in the morning's fight that it had to be moved back to reform, and did not rejoin the command again during the battle."

On page 41 Buck says:

"The brigade was sorely reduced; of the 2,700 taken into the fight, but 800 remained on the morning of the 7th."

"had the post of honor and danger." It was annihilated as a fighting unit before 10 A. M. It formed the extreme left of the advance of the Confederate army, Harder's Corps resting on Snake Creek. The great purpose of the Confederates was never accomplished, namely, to drive Sherman back north of the bridge over that stream across which General Lew Wallace was to come and did come as the firing ceased. On the 5th Jefferson Davis telegraphed Johnston to fight them in detail. On the morning of the second day, Cleburn's brigade (almost all its officers had been killed) reorganized, mustered 800 muskets. The second day was not a battle but a retreat. General Grant says the best that Beauregard could do was to get 20,000 men in line the second day.

In lawyer style General Sherman disposes of Whitelaw Reed and Henry Villard. They were both "liars," neither were at the front.

The record is that the Confederates captured 3,000 of General Grant's men while he only captured 1,000 of theirs. Twenty-two hundred of Prentice Division held the Confederates back while Grant shortened his line behind them and then surrendered after they were surrounded. But because of the larger number killed Grant must be given first place. Sergeant York captured more Germans by ten-fold than Sergeant Woodhill killed, and yet Woodhill is named by General Pershing as the typical American soldier. But Woodhill can't be an officer according to the American system. Napoleon would have made him a marshal. This explains why we have pacifists. The generals don't know how to argue their case.

In America the experts, legal, medical, publicist and military, should remember the ultimate decision is with the inexperienced rabble with which Grant put the seal on the Southern Confederacy that Sunday morning long before Albert Sidney Johnston was killed.

The American system of making war as Elbridge G. Spaulding did under Sections 2, 5, 11, 12, 13, 14, 15 and 16

of Article 8 set out in Chapter 11 is all wrong. One of the Virginia professors and historians* in his history of "Jefferson Davis, President of the South," after asserting that the Constitution of the United States—of which the Constitution of the Confederate States of America was a copy—so hampered the respective presidents that nothing was accomplished until there was a resort to the war powers on both sides, the advantage being with the Union because Mr. Lincoln got further away from his constitution than Jefferson Davis did with his, says on page 117,

"Likewise in 1917 the Constitution was suspended and a temporary dictatorship established to meet a certain crisis far less dangerous than that of 1861."

Instead of even a temporary dictatorship in 1917, Woodrow Wilson would have been stronger had he followed our constitutional methods and the World War shorter; and Mr. Lincoln, we think our text shows was not much of a dictator;† indeed did not use his constitutional powers in the beginning while if Jefferson Davis had attempted any more of a dictatorship than he assumed‡ Alexander A. Stephens would have made short work of the Confederacy. As it is our Virginia historians say Stephens did the Confederacy more harm than did Grant and Sherman.

We have shown that Stephens was a Douglas Democrat and believed in Squatter Sovereignty the underlying principle of the American system. The specific charge of the Virginia historian is that Stephens was a Union man;§ failing to arrest the Secession movement in Georgia, he got himself elected a delegate to the Secessionist or Confederate Convention at Montgomery, and there engrafted on the planters and "Nordics" the Constitution of the United States, and then with its limitations smothered the heart out of the Confederacy notwithstanding all the force and eloquence of Jefferson Davis.

* H. J. Eckenrode.

† Ante, 144-183, Chapter 14.

‡ Ante, 164.

§ Ante, 112.

However this may be, Alexander H. Stephens, as we have shown in Chapter 12 is one of the greatest Americans, for he demonstrated that Constitutionalism or the American System is dearer to the American heart than a Military dictator and a selective service draft.

Stephens is also something of an exemplification of the American lawyer, James Otis, who conceived the American Republic, history kindly suppressed the names of Otis' clients. Before Otis made his argument he returned them their retainers. They were mere commercial men and did not approve of Otis' talking about the natural inherent inmitigable rights of man. The final criticism of Stephens is that he thought more of the system than he did of the slave property the planters and Nordics wanted protected.

And so if we are correct in the Introduction in resting on Justice Wilson's proposition that the underlying principle of the American system is the consent of the governed,* it can be understood why we have no military heroes from the World War; why so many of the drafted men make the declaration that never again will they be forced to join the colors; why the National Defense Act of 1920 recognized the States and the National Guard as the basis of the Army, however much the regular army may put at the apex. And that as Lyman Trumbull said, constitutional powers were better than war powers under which to wage a war; and hence it was that as chairman of the Judiciary Committee of the United States Senate he submitted the 13th Amendment and the amendment abolishing slavery and from his place in the Senate called on the President of the United States to put U. S. Grant in command. Not a single slave did the Emancipation Proclamation of the war measure free. And be it further remembered that Elbridge G. Spaulding in putting out the Greenbacks,—which won the war—did it not as a war power but under the sections of the Constitution enumerated in Chapter 11 and was finally sustained by the Supreme Court.†

* Ante, 2-204.

† Ante, 150.

That judicial reform in England grew out of the Parliamentary Union with Scotland (in 1707) must even stand to the credit of the Scotch.

It was greatly promoted by the American Revolution which really was started by the Puritans and as we have shown, saved the empire.

But the Scotch judicial powers never emanated from the Crown, and there never was such an office as the English Chancellor in the Scottish system. The hearing of Scotch appeals in the English House of Lords presided over by the English Chancellor—the canny Scotchman soon went after the Chancellorship, the real government in England—made manifest the necessity of reforms in the English or Anglo-Norman system of Jurisprudence—Most all of the English Jurisprudence or reform acts of the 19th century were drawn by Scotchmen, who had occupied the Chancellorship.

One of the first manifestations of Parliamentary Union with Scotland was an act of Parliament abolishing on a petition from the Northern Circuit, pleadings in the Norman-Latin tongue. And while, as Campbell says Vol. 6, page 31, "the jargon employed would have been very perplexing to a Roman of the Augustinian Age, it was wholly unintelligible to the persons whose life, property and fame were at stake." "This absurdity had been corrected in the time of the Commonwealth, but along with many others so corrected, had been reintroduced at the Restoration."

The difference between the American and English systems is in form and in theory. Blackstone's definition of law is "a rule of civil conduct prescribed by the Supreme power commanding what is right and prohibiting what is wrong." "The Supreme Power" is the King. From him all power emanates. In form at least every Act of Parliament from the Conqueror down to 1927 runs.

"Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this Parliament assembled, and by the authority of the same, as follows:"

Then the King through his Chancellor could and did direct his judges how to administer the laws he had passed.

Neither the President nor the judges partake in the making of our laws. "Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled;" is the form in which every American law begins.

Easy then it can be understood that we did not evolve from the English Norman Prelate Made Common Law. We revolted.

In that first "milestone" of the Constitution *Chisholm v. Georgia*, 2 Dallas 419 to which we have adverted on page 458, our Scotchman, Justice James Wilson* with Blackstone's definition in mind said, expounded the consent of the governed, "The principle is that all human law must be prescribed by a superior. This principle I mean now to examine. Suffice it, at present, to say that another principle different in its nature and operations, forms, in my judgment the basis of sound and genuine jurisprudence; laws derived from the pure source of equity and justice must be founded on the consent of those whose obedience they require. *The Sovereign when traced no source must be found in the man.*"

Ex-Senator Beveridge to the contrary, James Wilson was the great American jurist. He was against the barbarism of the common law.† That is why Washington named him an associate justice of the United States Supreme Court rather than John Marshall. Of all the American jurists in the period between Cornwallis' surrender and the inauguration of Washington it was James Wilson who demonstrated that the English common law and the English machinery of government as set forth by Blackstone could not be the basis of the American system. His opinion in the *Chisholm* case‡ which Marshall was against was reversed by the Eleventh Amendment it is true. But it was sustained at Appomattox and by the Fourteenth Amendment.

* Ante, 2-204.

† Ante, 199.

‡ Ante, 22.

Certainly I am for all kinds of military training. General Grant not only at intervals visited General Sherman during the battle but his other division commanders, Wallace, W. L. Prentice, McClernand, and Hurlburt. He says he was with Prentice a short time before Prentice surrendered. I "landed" with Woodrow Wilson when I cited him the page and volume in Grant's *Memoirs** where he said he could go farther with volunteers than Buell with regulars. This was after Bundy had disobeyed Foch's orders and showed that the American soldier could, in prize-ring parlance, punch, that is, land a blow that hurt. The records will show that it was Woodrow Wilson who saved Bundy from disgrace. As commander-in-chief he had Bundy promoted. Two of my mother's favorite grand-nephews were with Bundy at Chateau Thierry. Both were afterwards killed. One was a squirrel hunter in Southern Indiana.

My father was one of the witnesses with whom John A. Rawlins convinced Abraham Lincoln that Grant won a victory at Shiloh, that he was not drunk on the morning of the sixth, at midnight before, or on any night for ten days prior thereto, but not in the conventional military style and through the military channels did the lawyer of the Douglas school approach the lawyer who happened to be president of the United States. He argued his case as his duty required without consideration for the presidential office or its occupant. "They were across the river and all their boats burned."†

It was the Douglas idea of making war. These papers never went into the archives of the War Department. Perhaps they may turn up in the papers which Robert Lincoln deposited with the Librarian of the Congressional Library with permission to publish in 1946.

Not only during that ten days at Savannah was General Grant free from drink, but on all other occasions when the exigencies of the crisis demanded the use of all his genius was

* Grant's *Memoirs*, Vol. 1, p. 295.

† Ante, 84, Chapter 9.

he temperate. I have heard my father say that at other times he gave vent to his appetite. And then Rawlins would storm and swear and threaten to leave him. General James H. Wilson hints at this in his *Life of Rawlins*; he had it all written out but suppressed it at the instance of the publishers. Rawlins was a temperance man. He died of tuberculosis. He might have been better off had he drank a little whisky as my father did on that California trip. General Wilson deprecates Rawlins as a military man because Rawlins did not understand what the professionals call logistics and strategy, that is, technicalities. Making this concession to "professionalism," what we have heretofore said about Rawlins as a lawyer saves my profession from disgrace. Rawlins was too big for technicalities. Although General Grant had been opposed to making the freedmen soldiers, Rawlins it was who gave us the Fifteenth Amendment. His logic was inexorable. A man who was required to carry a gun in battle could not be denied the ballot. Pat Cleburne first put it up in writing to the Confederate Government, to free and arm the slave. He was reprimanded and turned down for a lieutenant-generalship. After it was too late, the Confederate Congress enacted the Cleburne idea into a law. This enactment was one of Rawlins' promises to give the negro the ballot.* And yet General Wilson says Rawlins did not know anything about logic. On this line he had them beat a mile. He died as Secretary of War.

General Wilson had a younger brother who became more eminent in his profession of the law than General Wilson was in his.

Bluford Wilson was born at Shawneetown, Illinois, November 30, 1841. He was a Douglas man in 1860, although too young to vote. He enlisted as a private with the 120th Illinois, in August 1862. October 29, 1862 he was made Adjutant of this regiment and came out a Major after participating in a score of battles.

* Ante, 33.

Major Wilson had been United States District Attorney for the Southern District of Illinois, when in June, 1874, at the request of Secretary of the Treasury, Benjamin H. Bristow,* he was made Solicitor of the Treasury. As such, Major Wilson, during the remainder of that year and the early part of 1875, developed and prosecuted the Whiskey Ring, which had ramifications in St. Louis, Chicago, Evansville, Indiana, Milwaukee and other points in the United States. By corrupting revenue officers and by false returns, the Government was deprived of a great deal of revenue.

Because of my father's support of Bristow, for a time it broke up his relations with General Grant. While it never altered his opinion as to Grant's action at Shiloh, the Worthington court martial indicated that my father in his judicial and executive views deferred to no man.† He sustained Bluford Wilson right through in all the prosecutions that were conducted in his court, and Wilson afterward claimed that was where they broke the ring.

Major Wilson took General Grant's epigram in a letter to the Secretary of the Treasury Bristow—"Let no guilty man escape"—literally, and traced the conspiracy up to Orville Babcock, General Grant's private secretary, an ex-army officer and graduate of West Point. Part of Wilson's evidence was a telegram in Babcock's own hand-writing, sent to one of the conspirators at St. Louis, over a year old. This led to the Western Union destroying all telegrams after a few months.

A large number of men were convicted. Babcock was finally acquitted under almost peremptory instructions to the jury by U. S. Circuit Judge Dillon.

General Grant wanted to be a candidate in 1876 for a third term. He put the brakes on Bristow and Bluford Wilson. Then Wilson had a hand in formulating the Springer resolution which Congress passed in December, 1875, declaring that the tradition against a third term should not be violated. He was one of the leaders in the reform movement to nominate Bristow before General Grant fired them and always claimed

* Speech to the Army of the Tennessee, Nov. 7, 1866.

† Ante, 111.

they could have succeeded had they agreed to protect Zack Chandler's d—d rascals.* At Cincinnati on the first ballot James G. Blaine, 285; Oliver P. Morton, 125; Benjamin H. Bristow, 113; Roscoe Conkling, 91; Rutherford B. Hayes, 61; John F. Hartranft, 58. The deal was finally made with Hayes and he was nominated. Included in it was a promise to put John M. Harlan on the Supreme Bench which was kept.

General Grant came back from his trip around the world and told some of his intimates, among them my father, that there would be no scandals such as attended his last administration, in the event that he had a third term.† My father took him at his word and was one of his sponsors in the 1880 movement, which failed; although for 35 ballots and on the last roll call 306 delegates out of 756 voted for U. S. Grant. It was the opposition to "a third term" for any man more than the claim that General Grant would welcome back some of the men who had betrayed his confidence during his second administration that defeated him.

I listened to Major Wilson many times about the Whiskey Ring. He was clear to the last that Babcock was guilty. As a lawyer he was as sure of his ground and had as much moral courage as General Grant exhibited at Shiloh. The power of the press, the judiciary, and the influence of the Grand Army, who were for acquittal because the conviction of Babcock would have reflected on General Grant, as they wrongfully claimed, the Major said "were too much for me." "We were General Grant's real friends though he did not know it."

When the time came in 1892 for my father to vote for Grover Cleveland, as he deemed it his duty, he had prepared a letter to a certain distinguished statesman somewhat on the order of Richard Olney‡ in which he stated his position. Some of the boys in the trenches who saw the letter suggested

* Ante, 291.

† Ante, 241.

‡ Ante, 1.

that the announcement ought to be made to some ex-Union volunteer soldier "who was as clean as a hound's tooth." His answer was, "How would Bluford Wilson do?" The unanimous opinion was that Major Wilson was the man. Accordingly the letter was written.

At my last visit to Major Wilson at Springfield in 1875, while he was getting weak in his body, his mind was clear and firm, proving that the last thing that dies is the mind, he was very severe on the critics and the publishers and his brother, "The General," for cutting the heart out of Rawlins' biography.

As I write these final lines the telegraph brings the word that the Supreme Court of the United States has sustained the Belfield propaganda. We will clean up the blood so all Mr. Bok has to do is to purify the money, and war will be ended.

At Chapter 20, at page 240, I have alluded to the anxiety there was in our family about the possibility that doctors would steal my father's body to get a look at that two inches of bone that grew in his left lower limb that had been shot away in front of Atlanta. Since those days medical science has made great advances. After a year it seemed that the bone could not fill in and unite. A consultation was called of all the leading army doctors in the hospitals at New Albany, Jeffersonville and Louisville. Twenty doctors, with one dissenting, decided that amputation was necessary. After the spokesman for the nineteen had stated their opinion, my father asked Dr. John S. Sloan, "What do you say, Doctor?" He answered, "They might just as well cut off your head as to amputate that limb now; it would have been proper soon after you were wounded; now after a year's suppuration, the probing, the long period in bed, your depleted condition, you could not stand an operation." "Will you amputate, Doctor?" "No." "Then no other man shall." After three months the patient stood on his feet. The pure blood had carried the right amount of calcus and deposited it in exact line with

the bond in place of the two inches that had been shot away, and the limb was but very little shorter than the other.

The point I wish to make now is, that had we been under Volsteadism and Wheelerism, the opinion of the nineteen would have prevailed, and the patient would not have survived. The Supreme Court of the United States by five to four upholds the provisions of the Volstead Act that limits the amount of whiskey to one pint that a physician may prescribe to a patient during any period of ten days; the reason of the court being that a majority of Congress was of that opinion and a majority of the physicians are of the opinion there is no medicinal value in whiskey. Aside from the fact that the Eighteenth Amendment recognizes whiskey as a medicine, I claim that one of the natural inherent rights of the citizen is to demand and act on the opinion of a single physician against the opinion of the Congress, a divided Supreme Court, and the great majority of the medical fraternity.

Conceding that the government can control the mind and judgment of the doctor which I deny, it cannot say that the individual citizen cannot save his own life. The Eighteenth Amendment recognizes this right. It is not necessary to argue that it is not in the power of the Congress and the Supreme Court to take away a right the Constitution confers. It illustrates the absurdity of professionalism which would not let Grant make a report of what he did at Shiloh.

By means of the aeroplane, the President of the United States put his fourteen points into the hands of every German soldier. Of course, that was not the conventional method of making war, according to the European critics and our American publicists. The fact that Mr. Wilson could not write his fourteen points into the Versailles Treaty, that is, could not reach the European statesmen, is not to his discredit but to theirs, and it does not alter the fact that he reached the German soldier, produced the revolution, and brought about the Kaiser's abdication and the end of the war, which was better than doing it with assaults on machine-gun nests.

I do not believe that Mr Wilson would have been a party to banishing the submarine.* He would not declare war against it and neither did the American Congress, no matter how much the old women of both sexes, as Sir John Fisher said, declaimed against its ruthlessness. Before the Washington conference it had put the battleship on the bum, as Admiral Sims and General Mitchell said, and as the old mother predicted on the beach at Watch Hill in 1913. Naturally the Frenchman, Sarrent, agreed with Mr. Balfour and Mr. Hughes to scrap the battleship, the "weapon of the rich," but held on to that of "the poor, the submarine." That was one time I was with the Frenchman and against my British forbears.†

I am willing to unite with the Englishman to maintain White supremacy, as they say in Dixie, but that treaty of peace following Yorktown and Gladstone's conduct during our civil war—Jefferson Davis claims he did not play fair with them,—is conclusive he has not the brain and intelligence to lead the race. Lady Astor's statement on the floor of Parliament, May 1, 1927, is conclusive as to this: "You do not object when charwomen have babies and continue holding their jobs scrubbing your floors. But you do object when women do work that a woman ought to do. As for your statement that a woman cannot have children and do other work properly, *women might have twins every year and still be more efficient* than many members of Parliament."‡

Gunpowder has been the great civilizer. It abolished chivalry. It made the little man the equal, if not the superior, of the big one cased in armor. The aeroplane, the submarine and chemicals, will lessen and shorten war. They will certainly lessen the necessity for inflation. Finally, they will make the statesmen, if not the generals and the churchmen, consider "right and justice," as the guide for international relations, for long lines of infantrymen will be powerless against the few—the heathen—armed with the weapons of the Almighty. The women who produce the boys will see this if the generals and statesmen do not.

* Chapter 22.

† Ante, 28.

‡ Ante, 17-28.

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